

EXHIBIT “E”

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 SIDNEY MANES, administrator of the
4 estate of HECTOR RIVAS,

Plaintiff,

5

-vs-

Case No.:

5:19-cv-00844

6

ONONDAGA COUNTY; et al.,

7

Defendants.

8

9

DEPOSITION

10

11 WITNESS: ERIK MITCHELL

12 DATE: Thursday, October 19, 2023

13 START TIME: 10:30 a.m.

14 END TIME: 3:03 p.m.

15

16 LOCATION: Precision Reporters, LLC
17 110 West Fayette Street, Suite 750
18 Syracuse, New York 13202

19 BEFORE: Elyse M. Addabbo
20 Court Reporter and Notary Public

21

22 JOB NUMBER: 20262

23

24

25

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Also present:

26
27 Sidney Manes

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1 FEDERAL STIPULATIONS

2
3 IT IS HEREBY STIPULATED AND AGREED, by and between
4 the attorneys for the respective parties, that the
5 presence of the Referee be waived;

6
7 IT IS FURTHER STIPULATED AND AGREED that the
8 witness shall read and sign the minutes of the transcript
9 within 30 days upon receipt, and that the filing of the
10 transcript be waived;

11
12 IT IS FURTHER STIPULATED AND AGREED that all
13 objections, except as to form, are reserved until the
14 time of trial;

15
16 IT IS FURTHER STIPULATED AND AGREED that this
17 Deposition may be utilized for all purposes as provided
18 by the Federal Rules of Civil Procedure;

19
20 AND FURTHER STIPULATED AND AGREED that all rights
21 provided to all parties by the Federal Rules of Civil
22 Procedure shall not be deemed waived and the appropriate
23 sections of the Federal Rules of Civil Procedure shall be
24 controlling with respect thereto.
25

1 MR. JULIAN: I just want to put on the
2 record that all objections are reserved except
3 as to form.

4 THE REPORTER: Okay. And then the
5 billing for the transcript, is that to you,
6 Mr. Rickner and provided to Mr. Julian, or
7 what did we do last week?

8 MR. RICKNER: I think I just ordered one
9 for me.

10 THE REPORTER: Okay. And then do you
11 need a copy?

12 MR. JULIAN: Yes.

13

14 E R I K M I T C H E L L, having been called as a
15 witness, being duly sworn, testified as follows:

16 EXAMINATION

17 BY MR. RICKNER:

18 Q. Good morning, Dr. Mitchell.

19 A. Good morning.

20 Q. Have you ever had your deposition taken
21 before?

22 A. Yes.

23 Q. Okay. How many times?

24 A. I have no idea.

25 Q. Is it more than twenty?

1 A. I presume so.

2 Q. Just for clarity, you know the difference
3 between a deposition and, for example, trial or grand
4 jury testimony?

5 A. Yes.

6 Q. Okay. This would be -- these would be civil
7 matters?

8 A. Correct. Well, I had a lot of depositions in
9 criminal matters.

10 Q. Would that have been in Kansas or Wisconsin or
11 New York?

12 A. Primarily in Dade County, Florida.

13 Q. Okay.

14 A. There, it was mandatory that we were deposed
15 before trial.

16 Q. Right. Okay. Slightly different procedure.

17 With respect to civil cases, have you had your
18 deposition taken before?

19 A. Yes.

20 Q. Okay. And about how many?

21 A. I don't know. It's not a huge number, but I
22 don't know.

23 Q. Were any of those with respect to your work as
24 a medical examiner?

25 A. They were -- let's see. There was one where

1 there was a civil case went before the criminal case in
2 Kansas. I wasn't medical examiner. They don't really
3 legally have medical examiners there, they got coroners.
4 And I don't know if I was coroner for that county at that
5 time. I know I was later.

6 Q. Which county?

7 A. That would have been -- it was one of the
8 northeastern counties. It could have been Atchison. I
9 can't remember for sure.

10 Q. And which other civil matters do you remember
11 testifying in a deposition in?

12 A. That, I actually remember. There was one
13 dealing with the identity of some material collected off
14 the floor in front of a meat counter at a Sam's Club, the
15 question being whether could it be meat or not. Now,
16 that was done as a case submitted to Frontier Forensics,
17 the practice I worked for, in Kansas City, Kansas. But
18 for civil matters --

19 Q. Let me phrase it differently.

20 Were any of them civil rights cases or cases
21 brought under 42 USC 1983?

22 A. I know nothing about the legal grounds, but I
23 don't remember any civil rights issues.

24 Q. Okay. Now, your attorneys have probably
25 explained this to you already, but there are a few ground

1 rules just to make sure we get a nice clear transcript.

2 The first is that even though I ask these long rambling
3 questions, you may know exactly where I'm going, you do
4 have to wait until there is a finished question before
5 you jump in with the answer. Can you do that for me?

6 A. I will do my best.

7 Q. Excellent. And you can't gesticulate or nod
8 your head. You need to actually verbalize whatever
9 you're saying on the record. So if it's yes, you have to
10 say yes. If it's eighteen inches, you can't put your
11 hands up like this. You have to say 18 inches. Can you
12 do that for me?

13 A. I believe so. That's pretty standard, also,
14 in criminal matters.

15 Q. Yes, all to get a clear record.

16 You can take a break if you want to, you just
17 have to answer the pending question. Do you understand?

18 A. Yes.

19 Q. Now, you're testifying here in a conference
20 room, but it's the same rules as though you were in
21 court, meaning you have to tell the truth, the whole
22 truth, and nothing but the truth. Can you do that for
23 me?

24 A. Yes.

25 Q. Did you take any intoxicating substances in

1 the last twenty-four hours?

2 A. No.

3 Q. Have you taken any medication or failed to
4 take any medication at the result of which would be to
5 impair your memory or your ability to think?

6 A. No.

7 Q. Is there any medical reason besides the
8 ordinary passage of time that you wouldn't be able to
9 give full and complete testimony today?

10 A. No.

11 Q. And have you ever been -- well, withdrawn.
12 I can assume you've testified in criminal
13 cases?

14 A. Yes.

15 Q. Okay. Could you even ballpark how many?

16 A. It's hundred. I don't know how many.

17 Q. Okay. In those hundreds of criminal cases,
18 were you ever cross-examined with your prior grand jury
19 testimony or your prior deposition testimony in Florida?

20 A. I'm sure I was in Florida.

21 Q. Okay.

22 A. But I don't know -- I would -- I'm -- it would
23 be speculative. I presume that I -- that that would be
24 used, as a well-prepared attorney would have looked at
25 that.

1 Q. During your times testifying in criminal
2 court, have you been cross-examined with prior sworn
3 testimony?

4 A. Again, it's a presumpt -- I cannot remember
5 specific questions related to it, but I would be
6 surprised if it hasn't been, because I've had so much
7 court experience.

8 Q. Okay. So in all of the court experience that
9 you have, you can't say definitively yes or no if you've
10 ever been cross-examined with your prior testimony?

11 A. I would presume I have been.

12 Q. But as you sit here today, you just can't
13 remember?

14 A. But I can't remember a specific case to tell
15 you.

16 Q. I'm not asking for a specific case. I just
17 want to know if it happened?

18 A. Well, if I can't remember a specific case --

19 MR. VENTRONE: So I think he's answered
20 it.

21 A. -- I can't say --

22 Q. Is it fair to say that through your prior
23 experience testifying that you understand how important
24 it is to give clear and accurate answers when you're on
25 the record?

1 A. Yes.

2 Q. Now, did you prepare for this deposition?

3 A. Yes.

4 Q. Okay. Now, without going into any
5 conversations you had with your attorney, just did you
6 meet with your attorney, and if so, for how long?

7 MR. JULIAN: So I object to the question.

8 I believe that's -- the second part of the
9 question is attorney/client, and I'm asserting
10 that privilege, but I'm allowing the witness
11 to answer. I recognize there may or may not
12 be a waiver issue, but in the interest of
13 advancing the deposition and getting it done,
14 that is my objection.

15 MR. RICKNER: Okay.

16 MR. JULIAN: You may answer.

17 A. Are you asking about Facetime or conversation?

18 Q. Anything that you did to prepare, if you were
19 communicating your attorney, I just want to know the
20 number of hours and the number of meetings?

21 A. We've had conversation, and it's going to be a
22 generalized handful of times and I do not know how many.
23 It's not a -- it wouldn't be twenty.

24 MR. VENTRONE: Talking about preparation
25 for the deposition, correct, Counsel?

1 MR. RICKNER: Yeah, that's it.

2 MR. VENTRONE: Okay.

3 Q. Just prep for this deposition.

4 A. I'm trying to remember what his -- let's see.
5 We talked on the phone. It's going to have to be an
6 estimate, and I have not kept record of it. I did not
7 realize that was a question that I needed to be able to
8 answer. I'm estimating that there were probably five
9 contacts, maybe six, something in that order, and the
10 total lapsed time is probably in the order of eight to
11 ten hours.

12 Q. During your efforts to prepare for this
13 deposition, did you review any documents?

14 A. Yes.

15 Q. What documents did you review?

16 A. I reviewed grand jury testimony, I reviewed
17 files from the medical examiner's office, I
18 reviewed -- and the contents thereof, and I reviewed
19 trial testimony. I read through the series of three
20 depositions from Sidney Manes. I read through a quick
21 reading of the -- what's it called? Where
22 you -- interrogatories, I think it's called. I read
23 through the trial summation by Fitzpatrick, some other
24 documents I can't remember the name of, but documents
25 that pertained to the case.

1 Q. Did you listen to any audio?

2 A. I did.

3 Q. Were those interviews that you provided to the
4 county attorney in 1993?

5 A. That's what I'm told they are. I didn't
6 remember them at all, but yes.

7 Q. Okay. Did you recognize your voice in those
8 tapes?

9 A. Most of the time you could recognize my voice.
10 Sometimes it was a bit garbled.

11 Q. These are cassette tapes?

12 A. Well, they've been transferred to CDs so that
13 they wouldn't tear.

14 Q. Understood. But it's your understanding that
15 these were originally cassette tapes and they sort of
16 sound like cassette tape --

17 A. Correct.

18 Q. -- recordings?

19 Now, I'm going to try to save us some time
20 here. You testified at the trial of Hector Rivas
21 regarding your education and qualifications; is that
22 correct?

23 A. Correct.

24 Q. And you reviewed that testimony to prepare for
25 this deposition?

1 A. Yes.

2 Q. Just so we can skip over all of those
3 questions, will you confirm that the education and
4 background that you testified to at that trial was
5 accurate as of the time of that trial?

6 A. Yes.

7 Q. Okay. Do you have any independent
8 recollection of the autopsy or your examination of the
9 body of Valerie Hill? By which, I mean setting aside all
10 of the documents and audio and anything else that you
11 reviewed, you just happen to have a memory of it?

12 A. No.

13 Q. Okay. How many -- so just to be clear, would
14 it be safe to say that your testimony that you're going
15 to be providing today will essentially be based on
16 refreshing your recollection of the records that were
17 available to you?

18 A. It's from review of the records that are
19 available to me.

20 Q. As part of your review, did you review any
21 photographs or slides?

22 A. Yes.

23 Q. Okay. Were they in color?

24 A. Yes.

25 Q. And did they -- did the color photographs that

1 you were able to review, were they of approximately the
2 same quality as what would have been available to you in
3 1993 or 1987 when the photos were taken?

4 A. No.

5 Q. Okay. In what way did they differ?

6 A. They are reproductions. They were taken
7 originally on Kodachrome or Ektachrome, which is a very
8 high definition film, and as far as I can tell, they were
9 also in focus. But the -- when you reproduce them,
10 there's always a degradation of quality.

11 Q. Did you believe that degradation of quality
12 prevented you from being able to see things that you
13 would have been able to see otherwise?

14 A. Hard to know, because if you haven't seen
15 something, you can't say that you -- but I don't think it
16 inhibits my ability to analyze things related to this
17 case.

18 Q. As of 1980 -- withdrawn.

19 As of 1993 would it have been correct to say
20 that you've done about four thousand autopsies?

21 A. I believe that's what I testified to at the
22 time.

23 Q. Okay. Can you say what percentage of those
24 are -- what percentage of those are homicides as opposed
25 to some other cause of death, at least based on your

1 findings?

2 A. I know that in Dade County, we did about
3 twenty percent homicides, and I did a little over a
4 thousand autopsies there. When I was in training in
5 forensics, I did something over two hundred and
6 fifty cases total, and they tried to weight it towards
7 homicides so we had more experience with them. I don't
8 know the exact percentage, though. It's not something I
9 kept record of. And then here, I don't actually know the
10 autopsy percentage that we had that were homicides. It's
11 definitely one of the minority numbers. It's not the
12 majority of what we do.

13 Q. Now, just for reference, did you work at Dade
14 County before or after you came to work in Onondaga
15 County?

16 A. That was before.

17 Q. Okay. So when you speak of that percentage,
18 you're talking about as part of at least the four
19 thousand that you testified to?

20 A. Yes.

21 Q. Okay. Now, I just want to have you pull out
22 for reference Exhibit 1, and you can grab it, Exhibit 3,
23 and Exhibit 2.

24 Now, Exhibit 1 is really just for reference.
25 Can you look at this and just confirm that it accurately

1 states the days of the week that each specific date
2 occurred on in March of 1987?

3 A. I am making the assumption that this is a
4 correct --

5 Q. Okay. Do you have any reason to believe it's
6 not accurate?

7 A. No.

8 Q. Okay.

9 A. None that has been given to me thus far.

10 Q. Now, when did you first examine the body of
11 Valerie Hill in 1987?

12 A. When she was brought to the morgue -- well,
13 that's not true. I first saw her at the scene of demise.

14 Q. Okay. And would it be correct to say that you
15 actually went to the apartment where her body was found?

16 A. That's -- I do not have a direct memory of it,
17 but that's what I read in my -- in the reports.

18 Q. Okay. There were various photographs taken of
19 the body in the apartment. Did you take those photos?

20 A. It's quite likely that I took some, but I have
21 not reviewed any. I can't tell you.

22 Q. Okay. And while she was actually in the
23 apartment, did you perform any examination of the body?

24 A. According to the records, I did.

25 Q. Okay. What examination was that?

1 A. It was to just see what was there, the
2 external surfaces, and to check the body. One thing I'm
3 checking for is muscle stiffness.

4 Q. Okay. And also, you had confirmed she was
5 dead?

6 A. Well, that was pretty much known before. If
7 you wait to call the medical examiner to confirm death,
8 you're going to have a lot of problems along the way.

9 Q. Now, I'd like you to look at Exhibit 3 and
10 turn to -- hold on -- I believe it's Page 19. I'm just
11 going to show it to you so if you can look for that page,
12 please?

13 A. I'm sorry. I'm nearsighted.

14 Q. Yeah, you can look. I'm all sorts of sighted.

15 A. Okay. All right.

16 Q. I believe Page 19 is titled Scene
17 Investigation?

18 A. Yeah, I'm looking for it at the moment. Yes,
19 I've got it.

20 Q. Okay. Now, just to confirm, this memorandum
21 titled Scene Investigation, that's something that you
22 authored?

23 A. Yes.

24 Q. This is -- relates to an investigation you did
25 on March 30th, 1987?

1 A. That's correct.

2 Q. Did you actually type this up on March 30th,
3 1987?

4 A. I would not type it. My secretary would type
5 it for me.

6 Q. Okay. When you were at the scene of the
7 Valerie Hill murder, would you have taken handwritten
8 notes?

9 A. I've not seen any in review -- in the review
10 that I've done at this point, but I cannot guarantee you
11 that there were none. The absence of evidence is not
12 evidence of absence. In other words, I cannot tell you
13 that I didn't, but I normally would just put things in my
14 mind and then take care of it at the office.

15 Q. Let's go back to 1987 and your general
16 practice. Would it have been your general practice to
17 take notes at the scene of an incident?

18 A. It would vary. I mean, I could, I might not.
19 I do not actually remember our specific procedures at
20 that time. It was common for me to take photographs. In
21 fact, that was one of the first changes that occurred
22 when I came here.

23 Q. You mean that in 1983 when you came, you
24 started the practice of taking photographs as part of
25 crime scene investigations?

1 A. Yes.

2 (SIDNEY MANES entered the proceedings
3 at 10:51 a.m.)

4 BY MR. RICKNER:

5 Q. When you would take notes at the scene of an
6 investigation, was it your practice in 1987 to preserve
7 those notes, meaning to keep them as part of the file?

8 A. Yes.

9 Q. Okay. And would that have been turned over to
10 the District Attorney's Office?

11 A. Yes, if it was requested. I don't know what's
12 requested. Again, if it's requested, it's turned over.

13 Q. Okay. But if it's not requested, you wouldn't
14 necessarily turn it over?

15 A. I do not know what our automatic protocols
16 were at the time. I can't speak to that. But in
17 general, what people ask for is what they get.

18 Q. Now, this may sound a bit farfetched. Do you
19 know if you in your own personal records have any
20 documents going back to 1987 or 1993?

21 A. Not that I know of.

22 Q. Okay. Have you looked for any documents
23 relating to this case in your personal files?

24 A. I have not kept any from this case, so I
25 wouldn't look for them. Could I coincidentally have

1 something from another one that would be in some
2 paperwork I haven't thrown away, that's possible.

3 Q. Okay.

4 A. But I have not -- no case that I know of where
5 I've kept anything.

6 Q. Okay. Have you searched your own personal
7 files for any documents relating to the Valerie Hill
8 murder/autopsy?

9 A. Well, I was asked to look for things -- I
10 expect I was asked. I don't have a specific memory, but
11 I expect that I was asked to look for, so I would have.

12 Q. But you don't remember one way or another as
13 you sit here?

14 A. No.

15 Q. Okay. Now, going back to the scene
16 investigation, it says you pronounced the decedent dead
17 at 3:30 p.m.?

18 A. Yes.

19 Q. About how long do you think that was after you
20 arrived?

21 A. I have no independent memory of that, so I
22 cannot tell you.

23 Q. Okay. And in your notes, it says that: The
24 body was in full rigor with fixed anterior livor. Do you
25 see that?

1 A. Livor, yes.

2 Q. Livor?

3 A. Right. You can pronounce it "liver" or
4 "livor", depending on whether you went to public or
5 private school. I don't know.

6 Q. I kind of did both, so I don't have one way or
7 another. But when you say the body was in full
8 rigor -- actually, let me step back for a second.

9 Would it be correct to say that rigor is a
10 range, meaning it goes to represent multiple different
11 types of stiffness that you would actually feel when you
12 examine the body?

13 MR. JULIAN: Object to the form of the
14 question. You can answer.

15 A. Are there grades, if you will, where you can
16 estimate which muscle groups are involved, yes.

17 Q. However you would put it best if somebody were
18 to say, well, is rigor one thing or are there different
19 grades of rigor, how would you answer?

20 MR. JULIAN: Object to the form.

21 MR. VENTRONE: Same objection.

22 A. It can be done both ways.

23 Q. What do you mean by that?

24 A. Well, somebody may say body is in rigor, you
25 don't know what necessarily that means if you're trying

1 to break it down. Does every muscle group have rigor?

2 Is there variability between them?

3 Q. What about full rigor, what does that

4 represent when you would use the phrase in 1987?

5 A. That means that all muscle groups have some

6 degree of rigor.

7 Q. Okay. And you say some degree of rigor --

8 A. Or all muscle groups that I tested.

9 Q. Okay. Now, did you keep track of which muscle
10 groups you tested?

11 A. I do not have a specific note of it, so I
12 cannot speak to that.

13 Q. And is it possible that some muscle groups
14 might have had more rigor than others?

15 A. Yes.

16 Q. Okay. Is there a way of quantifying which
17 muscle groups have rigor and how much rigor in note
18 taking or in the practice in 1987?

19 A. You can do that, yes.

20 Q. Okay. So just to be clear, it would be
21 possible to go through the different muscle groups and
22 put in some statement quantifying how much rigor each
23 muscle group had?

24 A. That's correct.

25 Q. Okay. Now, would it be correct to say that

1 rigor changes over time depending on how long the
2 body --

3 A. You come into rigor and then you go out of
4 rigor. Yes.

5 Q. Right. So around the time that the body is
6 found is really the only time that you would be able to
7 quantify the rigor, because if you test it three or four
8 days later, it's going to be gone; is that fair to say?

9 A. It's going to be different.

10 Q. Okay. How is it going to be different?

11 A. Because of passage of time. If you read the
12 autopsy protocols from many offices, they assess rigor
13 well after the body has been brought in. I don't know
14 why. I don't find it useful in general, but they -- you
15 see that in frequent autopsy reports.

16 Q. Right. I guess what I'm saying is, is that
17 the time that you actually examine the body is the best
18 time to determine rigor in each muscle groups?

19 A. It is the earliest time you can do it.

20 Q. Okay. And if you want to capture that
21 information, for example, which muscle groups have gone
22 into rigor and how much, the time to do it is to write it
23 down right at the time that you're doing the
24 examination --

25 A. That's correct.

1 Q. -- is that right?

2 A. That's correct.

3 Q. Now, you also mention fixed anterior livor,
4 L-I-V-O-R. When you say anterior in this context, what
5 do you mean?

6 A. This means the front of the body as being
7 normally perceived, the front of the body.

8 Q. And fixed, what does fixed livor mean?

9 A. That means that when you apply pressure to the
10 area of discoloration, it does not fade.

11 Q. So put differently, after you roll the body
12 over and you pressed your finger into the skin, the
13 accumulated blood just stayed the same?

14 A. That's a different issue. If you're looking
15 at fixed livor, I can have fixed livor here and I can
16 have -- and then generate some unfixed livor afterwards,
17 but the front of the body here as fixed livor.

18 Q. Okay. And if I'm understanding you correctly,
19 it's possible that other parts of the body did not have
20 fixed livor?

21 A. You can generate a new pattern, yes.

22 Q. Okay. What do you mean by generate a new
23 pattern?

24 A. The livor is caused by the leak of red cells
25 out of blood vessels into tissues -- or actually, livor

1 is caused by the presence of red cells, and the fixation
2 of it is caused by the leak of the red cells out of the
3 vasculature into the non-vascular tissue where the red
4 cells then can escape when you apply pressure. Where if
5 it's purely intravascular, when you apply pressure, it
6 can move away. Now, if you've got fixed livor in one
7 place, it doesn't mean that you can't get some movement
8 when you -- additional livor when you move the body.

9 Q. Okay. If you had gotten additional livor when
10 you moved the body, would that have been something you
11 would have noted?

12 A. No, because it's changed. It's not relevant
13 to the factors that have been before here.

14 Q. What do you mean by it's not relevant?

15 A. What we're looking at is does the pattern in
16 which the body is found comport with the way the body is
17 found. In other words, does the pattern of livor match
18 the position of the body and to see if there is
19 indication of fixed livor where it shouldn't be.

20 Q. In other words, was the body moved after livor
21 had set in?

22 A. After fixed livor had occurred, correct.

23 Q. And how long does it typically take for fixed
24 livor to occur?

25 A. Depends very much on environmental

1 circumstances, temperature being the most thing, and it
2 could be microtemperature, as well. So for instance, a
3 clothed area will tend to retain heat better than a
4 non-clothed area.

5 And under average conditions of a household
6 environment when you find somebody, if you see fixed
7 livor, you start thinking about half a day or so, but it
8 may not be all fixed or there may be none at that stage.
9 It's just somewhere in that range, as I remember it,
10 for -- because I don't use it for timing. I use it for
11 an estimate of whether the body's been moved or not.

12 Q. Is there a point where fixed livor stops
13 developing?

14 A. When there is no longer blood that can be
15 moved around or if the tissue is sufficiently damaged
16 that the fluids have -- well, that's probably got to do
17 with fluids leaving, but you will get situations where a
18 body is sufficiently far along and we can't get an idea
19 of livor.

20 Q. Okay. And about how long does that take?

21 A. That, I don't know.

22 Q. Okay. The next sentence, you say: A small
23 amount of bloody mucoid fluid came from the mouth and
24 nose when the body was turned over?

25 A. Yes.

1 Q. What was the significance of that finding?

2 A. It's simply a note of a finding that's there
3 that I cannot ascribe necessarily a distinct impression
4 to -- anytime you got a body that's lying and draining in
5 one direction, if you then move it, you may get some
6 coming out. You may make an observation of it, but that
7 doesn't mean you can draw a conclusion from it.

8 Q. Okay. Well, based on your review of the
9 records at the time, did you draw any conclusion from
10 this?

11 A. I don't remember any specific conclusion from
12 it. It would be supportive, since she's a strangulation,
13 that you've got that, but it's not -- I cannot take that
14 finding and go backwards and say it had to be a
15 strangulation.

16 Q. Okay. Now, did you take the temperature of
17 the body?

18 A. No.

19 Q. Why not?

20 A. It is highly unreliable as far as drawing
21 conclusions from it, and people who do so, do so with a
22 sense of scientific rigor that isn't there. And so I
23 stopped -- well, I never really took -- hardly ever took
24 body temperatures.

25 Now, if I had somebody with a hypothermia

1 episode and you had them immediately after they die, you
2 do it not for timing, which is what most people try and
3 use it for, but to get an impression of whether they had
4 hypothermia.

5 Q. Regardless of whether or not you personally
6 find it useful for timing, is there a reason why you just
7 don't collect the information?

8 A. Because it is misused.

9 Q. Okay. So to be clear, you don't
10 collect -- withdrawn.

11 To be clear, your practice was not to collect
12 body temperature because you believe that other medical
13 professionals would misuse that information if they had
14 it available?

15 A. That's common, actually, yes.

16 Q. Okay. When you say that's common, what do you
17 mean by that?

18 A. Well, if you look at high profile cases that
19 you occasionally come across, people will try to use body
20 temperature to establish time of death. There's such a
21 tremendous variability. For instance, you start out not
22 knowing what a person's intrinsic temperature is. My
23 mother was by forensic calculations dead for something
24 like six hours all of her life.

25 Q. You mean that your mother's natural body

1 temperature was lower than --

2 A. Yes.

3 Q. -- what would be perceived as normal?

4 A. Yes.

5 Q. Okay. Now, you said that the apartment
6 appeared to be relatively cool?

7 A. Yes.

8 Q. As was the basement through the ceiling from
9 the floor upon which the decedent lay?

10 A. Correct.

11 Q. Now, did you measure the temperature in the
12 apartment?

13 A. According to the records that I reviewed, yes.
14 If I remember correctly, it was 62.

15 Q. Where did you see that recorded?

16 A. As I remember, there was a reference to it at
17 one point in one of the records. I can't remember if it
18 came out on trial or whether it came out in one of the
19 records itself.

20 Q. I'd like to -- let's go forward -- let's go,
21 actually, to the next page. Is this your handwriting?

22 A. Yes.

23 Q. Okay. Obviously, the parts that are not part
24 of the form?

25 A. Well, yes. Also, the top that has the case

1 number and Valerie Hill, that top line is not mine. In
2 fact, everything noted there is not my handwriting.

3 Q. Okay. Yeah, no, I can see the difference.

4 In the Valerie Hill section, do you know whose
5 handwriting that would be?

6 A. It would be somebody, technical staff helping
7 me.

8 Q. Okay. Do you recognize it?

9 A. No.

10 Q. Okay. Going below that, let's say below the
11 word hair, eyes, teeth and time, do you see handwriting?

12 A. Yes.

13 Q. Is that your handwriting?

14 A. Yes.

15 Q. Okay. Is the timing part your handwriting?

16 A. Is the timing of the 5:30?

17 Q. Yes.

18 A. No. That's somebody else's.

19 Q. Okay. Can you read going to the top left, I
20 guess, to the left side of the head diagram --

21 A. Mm-hmm.

22 Q. -- what that says?

23 A. Yes.

24 Q. What does it say?

25 A. It says: Full rigor with anserina.

1 Q. What's -- could you spell that last word?

2 A. A-N-S-E-R-I-N-A.

3 Q. What's anserina?

4 A. That is when the hair follicles have rigor.

5 Q. The hair follicles have rigored?

6 A. Yes.

7 Q. What does that mean in layman's terms?

8 A. The hair stands up. Cutis anserina.

9 Q. Now, going to the other side of the head, can
10 you read those two lines?

11 A. Ant., which stands for anterior livor,
12 partial/fixed. Nose flattened and -- nose flattened with
13 pressure. The C with the line over it stands for with.

14 Q. Now, what is partial fixed livor as you've
15 used that phrase here?

16 A. I'm saying it's both partial and fixed. I'm
17 using both. So not all of the body has livor and part of
18 it is fixed.

19 Q. Okay. And going down to the left side of the
20 head, I guess, left of the ear on the diagram, can you
21 read that for me?

22 A. Well, I think it's an R with parentheses and a
23 circle around it. I don't know. I cannot read the rest
24 of it.

25 Q. Okay. Can you -- given your experience with

1 your own work, can you make an educated guess as to what
2 that might be referring to?

3 A. It's not very readable. I don't know what's
4 written there.

5 Q. What about the other side, I guess, to the
6 right of the ear on the diagram?

7 A. Let's see. That looks like I'm describing
8 some jewelry in the -- see the short horizontal line
9 there and it goes out there, and then the bottom line
10 says -- it looks like it says Heart, and I'm presuming it
11 says And Stud or Heart and Stud. And then the other, the
12 top line, I think it says Round, and it might be Stud,
13 also. It's a guess, but I think I'm describing jewelry.

14 Q. Okay. Now, going down to the hand that's on,
15 I guess it would be the right hand but it's the left side
16 of the page?

17 A. Right.

18 Q. It looks like Two White, and then something
19 else. Can you tell me what that says?

20 A. Metal.

21 Q. Two white metal rings?

22 A. Yes.

23 Q. Okay. That was referring to jewelry?

24 A. Yes.

25 Q. And going right below that, I see it looks

1 like a one-eighth, can you tell me what that is?

2 A. One-eighth and then Abrasion.

3 Q. Okay. So that means there's just a
4 one-eighth-inch abrasion on the skin?

5 A. Correct.

6 Q. Okay. And going over to the other hand, is
7 that another reference to a ring?

8 A. It looks -- I believe it's saying White Metal
9 Spoon Ring.

10 Q. Okay. And looking at the other side, there's
11 a sort of almost circular. Does this represent fecal
12 smear --

13 A. Yes.

14 Q. -- that was found on the body?

15 A. Yes.

16 Q. Okay. Now, the -- Ms. Hill was strangled,
17 right?

18 A. That's correct.

19 Q. Okay. You don't have any notations around the
20 neck. Why not?

21 A. That's correct. I noted -- I removed the
22 implement of strangulation. I can't remember whether I
23 removed it at the scene or whether I removed it at the
24 autopsy.

25 Q. Okay. You said dictated it. While you were

1 doing an autopsy, was it your practice to have, for
2 example, a Dictaphone that you could speak into so you
3 could take notes while your hands were dirty?

4 A. No.

5 Q. Okay. What did you mean by dictated it?

6 A. You mean the previous exhibit --

7 Q. You just used the phrased dictated it. I'm
8 just wondering what you meant by in context?

9 A. Oh, I would dictate the findings that I had.
10 I did not take a direct note of it there.

11 Q. What do you mean by dictate the findings that
12 you had?

13 A. Well, for my autopsy, I had to dictate that,
14 and that's where I would have document it.

15 Q. Okay. And when you say dictate, what do you
16 mean -- when you use that word in this context, what does
17 that practice mean? Does that mean speaking into a
18 microphone, talking to somebody else, taking notes,
19 something else?

20 A. It's dictating into a microphone. I think we
21 were -- I can't remember which equipment we were using at
22 the time, either a cassette tape or I think we've gotten
23 away from the Dictaphone or Dictaphone sheets. I don't
24 know. I can't remember. It's way too long. I would
25 have dictated it into some sort of device.

1 Q. Right.

2 A. Which would provide something for the
3 secretary to transcribe.

4 Q. Right. And was it your practice to retain
5 whether it was the cassette or the sheet or the little
6 Dictaphone cassette, mini cassette, after your autopsy?

7 A. Well, I'd give it to the secretary.

8 Q. And then what happened to it?

9 A. It would be transcribed and then reused.

10 Q. Okay. And would your secretary transcribe it
11 verbatim?

12 A. Yes.

13 Q. Moving on to the next page, is any of this
14 your handwriting?

15 A. No.

16 Q. Okay. Moving on to the page afterwards, do
17 you see this, and in the center it says Specimen
18 Description and Submit?

19 A. Yes.

20 Q. All right. Is any of this your handwriting?

21 A. Yes.

22 Q. Okay. Which parts of it are your handwriting?

23 A. My signature.

24 Q. Where do you see your signature?

25 A. Where it says Signature.

1 Q. Is that at the bottom, right above the words
2 Tests Requested?

3 A. Yes.

4 Q. Okay. And otherwise, did you fill out any
5 part of this?

6 A. This is filled out for me and then I signed
7 it.

8 Q. Okay. Did you provide any of the information
9 contained in this document?

10 A. Yes.

11 Q. Okay. What do you provide?

12 A. Pretty much all of it.

13 Q. Okay. Now, this was generated, I believe, at
14 9:37 a.m. the following day after, being March 31st, the
15 day after the body was found?

16 A. That is when it was delivered, when the form
17 with the specimens were delivered to the laboratory. The
18 form would have been completed at the time the autopsy
19 was done, other than the Delivered By and Received By.

20 Q. Okay. Now, at the bottom right, under
21 narrative/medical history, is this information that you
22 provided --

23 A. To me that's the bottom left.

24 Q. You're right, it is. It's the bottom left.
25 Narrative history, or Narrative/Med History, do you see

1 that?

2 A. Yes.

3 Q. Did you provide that information --

4 A. That would be at my direction.

5 Q. Okay. To be clear, when it says: Appears as
6 though deceased was there approximately two or three
7 days --

8 A. Yes.

9 Q. -- was that your conclusion?

10 A. Yes.

11 Q. Okay. Now, when you say two or three days,
12 measuring from March 30th, what do you mean by that?

13 A. That means from the time of discovery.

14 Q. Okay. So what would two or three days be,
15 would that be the 28th, the 29th, and the 30th?

16 A. That would be from the day of discovery, which
17 was, what, the 30th?

18 Q. Mm-hmm.

19 A. Okay. And then the 29th, 28th, 27th.

20 Q. Okay. So by putting down two or three days,
21 you were pushing it all the way to 27th?

22 MR. JULIAN: Object to the form.

23 MR. VENTRONE: Yeah.

24 A. That includes it.

25 Q. You were including the 27th as part of this

1 conclusion?

2 A. Yes.

3 Q. Okay. I'd like to go to -- actually, skip the
4 next page, which isn't that interesting. Go to the
5 Certificate of Death. Now, I'd like you to look at the
6 To Be Completed by Coroner or Medical Examiner Only, do
7 you see that?

8 A. Let's see.

9 Q. We're looking -- this is the bottom right
10 quadrant.

11 A. I'm just looking for where it says To Be
12 Completed By. That's what it was.

13 Q. No. No. Right underneath that, is that your
14 signature?

15 A. Oh, yes. Yes.

16 Q. Okay.

17 A. I was looking down at the actual certification
18 part. Okay.

19 Q. And there's an X that says Medical Examiner
20 because at the time you were medical examiner?

21 A. Yes.

22 Q. Okay. Now, it says pronounced dead
23 March 30th, 1987 at 3:30?

24 A. Yes.

25 Q. Okay. And that would be information that you

1 would have typed into the Certificate of Death or would
2 that have been something you directed somebody to do?

3 A. I would have directed it.

4 Q. Okay. Is that true for all of the typed
5 portions on the Certificate of Death, meaning that you
6 directed this to be provided?

7 A. That's correct, and then I looked at it before
8 signing it.

9 Q. Okay. Of course. Now, if you look towards
10 the section Cause, right at the bottom, towards the
11 middle -- well, first, it says Homicide. Do you see
12 that?

13 A. Yes.

14 Q. And to the immediate right, it says Date of
15 Injury?

16 A. Yes.

17 Q. And it says March of 1987, and then UNK?

18 A. Correct.

19 Q. That says unknown; is that correct?

20 A. That's correct.

21 Q. Why did you put unknown?

22 A. Because it's unknown.

23 Q. Okay. What do you mean by unknown?

24 A. Because I don't know it.

25 Q. Okay. So just to be clear, when you put down

1 unknown, did that mean that you did not have any opinion
2 as to what day that Ms. Hill died?

3 A. That's correct.

4 MR. VENTRONE: Object to the form.

5 Q. If that opinion had changed, meaning that if
6 you had some opinion as to what day she had died, would
7 the Certificate of Death have been updated?

8 A. Could be if there was a request for it.

9 Q. Okay. Well, based on -- did you ever come to
10 a determination as to what day Valerie Hill died,
11 according to your review?

12 A. No.

13 Q. Okay. Go back to the beginning. Now, I'd
14 like to go to page -- well, it's page one of the external
15 examination. That's the page, exactly. It's the second
16 page of Exhibit 3. And it says here: The body has fixed
17 anterior livor with flattening of the nose secondary to
18 pressure?

19 A. Correct.

20 Q. Okay. And we've discussed fixed anterior
21 livor. Would it be correct to say that this doesn't note
22 the partial anterior livor?

23 A. Correct.

24 Q. Okay. Why would you have left that out of the
25 report?

1 A. Because that's a potential artifact of moving
2 the body like we have done. It does not add to
3 information that's useful to understanding about movement
4 of the body prior to the time of discovery.

5 Q. Okay. So you left it out because the partial
6 anterior livor could have been caused by the body being
7 moved to the medical examiner's office?

8 A. Any change from the fixed could have been
9 caused by a transfer and manipulation.

10 Q. Okay. Could it have been caused by something
11 else?

12 A. Well, I could have not seen some livor before.
13 That's possible.

14 Q. You mean some partial livor?

15 A. I could have not known -- yeah. I could have
16 not known. That's a possibility.

17 Q. Okay. Would it have been useful information
18 to record as part of your memorandum?

19 A. I do not believe so.

20 Q. Okay. Why would you have left it out?

21 A. Because it wasn't useful. It wasn't -- what
22 I'm trying to do is describe the things that can be
23 interpreted.

24 Q. Okay. So you didn't believe it was useful for
25 interpretation so you left it out?

1 A. Correct.

2 Q. Okay. Now, going down to the next, I guess
3 it's really paragraph: There is full rigor with cutis
4 anserina?

5 A. Anserina.

6 Q. Cutis, C-U-T-I-S. What is cutis anserina in
7 this section?

8 A. The same as before, which is the rigor of
9 muscle associated with hair follicles.

10 Q. Okay. And: The rigor is easily broken as the
11 body is coming out of rigor. What does that mean?

12 A. This means that the tissues were relaxing.
13 They're not stiff.

14 Q. Okay. The -- when the corpse of Valerie Hill
15 was moved from the apartment to the medical examiner's
16 office, how did that occur?

17 A. That would -- I don't have an independent
18 memory, but our practice was we would package the body
19 and then move it in our rig to the office.

20 Q. And is the -- when you say the rig, that's a
21 vehicle?

22 A. Yes.

23 Q. Okay. Is that vehicle kept at any particular
24 temperature?

25 A. No.

1 Q. Was the medical examiner's office where you
2 would have stored the body for the two hours before the
3 autopsy was performed kept at any particular temperature?

4 A. It would be in the cooler, and the cooler was
5 kept as cold as it could be without causing freezing or
6 other factors, but I don't know specifically the
7 temperature it was kept at. I haven't kept a record of
8 it.

9 Q. So just to be correct, you would have kept it
10 in the cooler for about two hours while you waited to do
11 the autopsy?

12 A. Right.

13 Q. Okay. Now, going to internal examination,
14 which would be page three.

15 MR. RICKNER: Just for convenience sake,
16 do you guys mind leaving the room since
17 getting him up and around --

18 MR. JULIAN: Not at all. Absolutely.
19 Absolutely.

20 MR. RICKNER: We're taking five.

21 (Off record: 11:24 a.m. to 11:33 a.m.)

22 BY MR. RICKNER:

23 Q. Going back to the internal examination, it
24 says here the 1,530 gram brain?

25 A. Yes.

1 Q. Safe to say that to make that determination,
2 the brain would have been removed from the body --

3 A. And weighed, yes.

4 Q. Okay. Now, after the brain was removed from
5 the body and weighed, what happened to it?

6 A. It was fixed in formalin and then examined by
7 Dr. Collins, a neuropathologist from Upstate Medical
8 Center.

9 Q. Okay.

10 A. In concord with us.

11 Q. And how long between the brain being removed
12 is it fixed in formalin?

13 A. That varies depending upon Dr. Collins
14 availability and scheduling and the needs of a particular
15 case. It could be two weeks. It could be eight weeks.

16 Q. Okay.

17 A. It could be longer.

18 Q. What steps are taken to ensure that the brain
19 doesn't degrade in between removal and being fixed
20 informally?

21 A. Placing it in formalin immediately.

22 Q. Okay. Then I've missed what you said.

23 Would it be correct to say that after you
24 removed the brain, you placed it in formalin immediately?

25 A. After it was removed, it was weighed. I

1 examined it externally, or the external parts of the
2 brain, it's still internal body, and then put it into
3 formalin.

4 Q. Okay. In general, your practice between
5 removal and putting it in formalin, what would that
6 interval typically be?

7 A. Minutes to an hour maybe.

8 Q. Okay. And what is formalin, just for the
9 record?

10 A. Formalin is formaldehyde that has been
11 diluted. And I'm trying to remember the nomenclature.
12 When you have a certain percentage of what can be
13 intrinsically gaseous formaldehyde dissolved in water, it
14 is usually sold as a -- it's a saturated formaldehyde
15 solution. And then when you dilute that, it's considered
16 formalin.

17 Q. Got it. Now, what is -- you used the phrase
18 "autolytic changes" here. What does that mean?

19 A. This means that it is beginning to soften, not
20 maintain the same structural integrity that it would if
21 it were fresh.

22 Q. Okay. And is there a way to quantify this or
23 is just mild softening the term that you chose?

24 A. Mild means it's definitely detectible. It's
25 there. It's not severe where you would have kind of a

1 run-through-your-fingers brain.

2 Q. Okay. And how long does it take for this mild
3 softening to develop?

4 A. That is a variable I can't answer.

5 Q. Okay. Do you have a range?

6 A. No, because under -- well, it depends on what
7 parameters you put in place. For instance, if you were
8 to find one of the people from the Franklin Northeastern
9 Expedition frozen, who have been frozen for a hundred
10 years, if there had been any insufficient temperature
11 variations to cause crystal formation and a variety of
12 things, you could have a brain that did not have
13 significant autolytic change. But that's extreme.

14 Q. Okay.

15 A. In the average situation, I've never timed it.

16 Q. It's fair to say, though, you've examined
17 thousands of brains?

18 A. Yes.

19 Q. Okay. For somebody who's found in an
20 apartment between 60 and 70 degrees, about how long would
21 these mild softening take to develop?

22 A. I do not know.

23 Q. And: There's an estimated milliliter of
24 liquid subdural and subarachnoid blood over the lateral
25 convexities close to the midline. Do you see that?

1 A. And here we have an oversight in my
2 proofreading of this particular one, because I'm sure I
3 put a number in front of milliliter, but I don't know
4 what it was.

5 Q. Okay. Just one milliliter would be --

6 A. Milliliter would be --

7 Q. -- very unlikely?

8 A. Unlikely, yes.

9 Q. Okay. But there's some number of
10 milliliters --

11 A. Right.

12 Q. -- of liquid subdural and subarachnoid blood?

13 A. Right.

14 Q. Okay. What is the significance of that?

15 A. This is potentially related to the injury of
16 the brain. I didn't know at this point whether further
17 sectioning, when we created sections of the brain with
18 Dr. Collins, whether we were going to see contusion or
19 not. I could not see any of the misspelled acute
20 contusion. I did not see any acute contusion, but that
21 did not mean I wasn't going to see something later.

22 Q. Okay. And to be clear, if you had seen
23 something later, would it have been included in this
24 section?

25 A. No.

1 Q. Where would it have been included?

2 A. In Dr. Collins's report.

3 Q. So you mean if Dr. Collins had come up with
4 further evidence of contusion after his examination of
5 the brain --

6 A. At the time of his examination, if either of
7 us had seen anything, it would have been noted.

8 Q. Did you examine the brain with Dr. Collins?

9 A. That would be my standard practice, but I
10 cannot guarantee you in a given case that we did not take
11 it up and examine it.

12 Q. Just let's skip ahead and go to one, two,
13 three, four, Gross Description -- keep going four more,
14 four pages. Not that one, the next one. Yes.

15 It says Gross Description of Brain After
16 Fixation, do you see that top part?

17 A. Yes, I do.

18 Q. If you had been part of this examination,
19 would your participation have been noted in the report?

20 A. No.

21 Q. Okay. So as you sit here today, you don't
22 know whether you were part of this examination or not?

23 A. I cannot -- I do not have an independent
24 memory of it.

25 Q. Okay.

1 A. We had a policy, a practice, if you will,
2 actually not so much a policy, he would come down, I
3 can't remember whether his was once a month or something
4 approximately, and examine brains with us usually, but I
5 cannot say that some did not go back to Upstate Medical
6 Center.

7 Q. Okay. To be clear, you don't know as you sit
8 here today?

9 A. Correct.

10 Q. And have you seen any notation or anything in
11 your testimony that indicates whether or not you were
12 part of it?

13 A. No.

14 Q. Okay. Going -- go back to page four of your
15 sort of overall memorandum?

16 A. You mean the autopsy report?

17 Q. Yes. That is actually -- it doesn't have the
18 title Autopsy Report, but that's what it is?

19 A. Yes.

20 Q. Okay. And you see in the top left, it says:
21 The 280-gram heart?

22 A. Yes.

23 Q. Okay. And it says: This tissue is diffusely
24 mildly softened secondary to autolysis. Do you see that?

25 A. Correct.

1 Q. What does that mean?

2 A. That means the tissue is beginning to
3 breakdown from its own degradative processes.

4 Q. Okay. And typically about how long does that
5 take in an average situation, apartment 60 to 70 degrees?

6 A. It varies considerably. I can't actually put
7 a time on it. The more you have of it, the more you tend
8 to think of longer time passing, but I can't make a
9 direct correlation. There are too many factors that
10 affect it.

11 Q. Okay. It says here mildly softened?

12 A. Right.

13 Q. Would that be consistent with somebody who was
14 dead for seventy-two hours?

15 A. Yes.

16 Q. Would it be consistent with somebody who was
17 dead for six hours?

18 A. It could be, yes.

19 Q. Okay. Is there any way to make a closer
20 determination as to time of death with respect to how
21 much the heart has softened?

22 A. All you can say is that the more you notice
23 and then actually go through the trouble of noticing
24 this, the more it indicates that there's been some
25 passage of time, but there's so many variables, I can't

1 tie it down to a time.

2 Q. Okay. And when you say there's so many
3 variables, that also includes in the Valerie Hill case,
4 you can't tie it down to a time?

5 A. That's correct.

6 Q. Okay. And the same is true for the brain?

7 A. Yes.

8 Q. Okay. Can you tie it down to an outside
9 range, like bookend it?

10 A. Looking simply at likelihoods, I cannot give
11 you a specific range and say not beyond that, no.

12 Q. Okay. At what point does it become unlikely
13 if you were bookending it?

14 A. I mean, to have no softening -- let me
15 understand the question. You're asking how long can you
16 go having no softening?

17 Q. Yeah. To start out.

18 A. I don't know the answer to that.

19 Q. Okay. How about to the point where you stop
20 describing it as mildly softened and describe it with
21 another word?

22 A. Then if it is falling apart, then it's
23 severely autolytic.

24 Q. Is there something between mildly and severe?

25 A. I'm sure I can use moderately sometimes.

1 Q. Okay.

2 A. But I don't have any specific borders for any
3 of those.

4 Q. Okay. Now, going down to the
5 lungs -- actually, back up for a second.

6 Was there anything out of the ordinary
7 regarding the weight of the brain, the heart, the lungs,
8 the liver, or the spleen?

9 A. No.

10 Q. Okay. Now, looking at the lungs, do you note
11 any softening or other degradation?

12 A. There is some distribution of blood in the
13 airway, which is the red distribution, and then some
14 edema foam in the airways, which indicates accumulation
15 of fluid in the lungs.

16 Q. Right. And for a strangulation death, that
17 would be typical, right?

18 A. You can get it in a lot of different things,
19 but it's one of the things that goes along with that
20 diagnosis.

21 Q. Okay. Is that correlated with degradation of
22 the lungs due to some sort of decomposition?

23 A. You can get it with decomposition.

24 Q. Okay. Is that what you believe happened here?

25 A. I make no specific note, so I can't speak to

1 that.

2 Q. Now, moving on to the liver, this one I know
3 how to pronounce, is there any notation in this paragraph
4 about the liver regarding degradation?

5 A. Yes.

6 Q. Okay. What is that?

7 A. It says that there's gassy crepitus. In other
8 words, it's decomposing. There is a gas-producing
9 organism in the tissue.

10 Q. And it says mildly apparent?

11 A. Yes.

12 Q. In a case like Valerie Hill's, is there any
13 indication of how long that takes to develop?

14 A. It is highly variable.

15 Q. So again, six hours or six days, you couldn't
16 say one way or another?

17 A. I cannot. By six days, you have an increased
18 chance to have it, but it doesn't tell you -- I can have
19 somebody who is six days who doesn't have it.

20 Q. And moving to the stomach contents?

21 A. Yes.

22 Q. It says: There appears to be congealed grease
23 in one solid chunk?

24 A. Yes.

25 Q. Is there any indication of anything else in

1 the stomach?

2 A. Well, there's liquid.

3 Q. Okay. Was there any indication of how
4 recently the person had eaten prior to death?

5 A. I can't answer that.

6 Q. Okay.

7 A. I mean, I don't have anything that is visibly
8 undigested.

9 Q. Okay. So you have -- let's just say somebody
10 had eaten a sandwich six hours before they died, would
11 you expect to see congealed grease in one solid chunk or
12 would you expect to see more or less or something else?

13 A. It depends on what they ate and their
14 digestive system and whether they -- people digest things
15 at different time frames. Now, for most of us, under
16 average conditions, you get hungry every few hours. It
17 doesn't mean you've necessarily emptied your stomach, but
18 you've -- you start to want to eat again. I don't
19 actually know where you're going.

20 Q. I'm not going anywhere.

21 A. Okay.

22 Q. I just want to know what you want to know.

23 I would say this: The presence of the
24 congealed grease in one solid chunk, does that indicate
25 anything about how long it had been since this person had

1 eaten?

2 A. Very broad terms, if somebody came out
3 of Bergen-Belson and died before being fed, you wouldn't
4 expect to find it, because they haven't been fed there,
5 they were starving to death. But I do not know exactly
6 how long you can retain some grease from a -- let's say
7 if you had a heavy grease-filled meal, especially if you
8 got GI problems. It depends on the person.

9 Q. Okay. But there's no indication that Valerie
10 Hill had GI problems, correct?

11 A. No, not that I know of.

12 Q. Just an ordinary, you know, relatively healthy
13 woman the age of Valerie Hill, if she had eaten a
14 sandwich and died six hours later, would you expect to
15 find remnants of the sandwich in the stomach?

16 A. It depends on what the sandwich was made of.
17 It depends on a variety of factors. I cannot say that I
18 expect it. I don't have an expectation of it.

19 Q. What about if she had just eaten some garlic
20 bread?

21 A. Okay.

22 Q. If she had died six hours later, would you
23 expect to find the remnants of garlic bread in her
24 stomach?

25 A. No, not gross visible remnants.

1 Q. But would you expect to find something that
2 perhaps could be related to garlic bread or food or
3 something else in the stomach?

4 A. If you had greasy garlic bread, could this
5 chunk be from that, yes.

6 Q. Okay. And about how long between eating and
7 death would be this sort of one solid chunk?

8 A. Don't know.

9 Q. Next, you note that: The mucosa has lost some
10 of the usual rugal folds?

11 A. Yes.

12 Q. That's R-U-G-A-L. What does that mean?

13 A. That means that the internal lining of the
14 stomach is losing some of its structure.

15 Q. Okay. And is that part of a disease process
16 or is that part of the decomposition of the body or
17 something else?

18 A. It could be both.

19 Q. Here what do you think it was?

20 A. I have to -- I make no specific note, so I
21 cannot speak to that.

22 Q. Okay. Is it an indication that the
23 body -- well, withdrawn. You already answered.

24 Then you go: There is a very light coating of
25 mucoid, tan-brown material over the small bowel without a

1 distinct C-H-Y-M-E column?

2 A. Correct.

3 Q. What does that mean?

4 A. This means that there is something on the
5 surface of the lining and I cannot tell what it is.

6 Q. Okay. Is there any testing or something else
7 that you could use to tell what it is?

8 A. I don't know what it is, so I can't answer
9 that question.

10 Q. Okay. Would there have been tests that you
11 would have performed to answer that question in 1987?

12 A. No.

13 Q. Now, moving down to the pancreas, it says:
14 Softened somewhat by autolytic change?

15 A. Yes.

16 Q. Is that the same mild changes that we've
17 discussed in the other organs?

18 A. The pancreas can autodigest very easily
19 because it's full of digestive enzymes, and when you
20 remove oxygen, it will autodigest. I can't use it for
21 timing. Now, if you get somebody with no autolysis of
22 the pancreas, that's good preservation and you have a
23 higher chance of that if it's a short period of -- since
24 he died.

25 Q. What do you mean by short period in that

1 context?

2 A. Okay. If you die within -- if you're
3 dead -- found within a few hours and the autopsy is
4 performed within just a few hours of death, you've got a
5 fair chance you may not notice anything that you notice
6 as far as autolysis. If somebody is a day out, you have
7 a greater chance of finding it. If you're several days
8 out, there's a very good chance that they're going to
9 have it.

10 Q. Okay. And this sort of digesting itself is
11 something that happens after death --

12 A. Yes.

13 Q. -- obviously?

14 A. Well, alcoholics do it, and that's one of the
15 reasons they got pancreatic problems.

16 Q. Okay. Any normal healthy person, though, this
17 doesn't occur to, just talking about the process that
18 occurs after death?

19 A. If you're healthy, it's not taking place. If
20 it's taking place, you're not healthy.

21 Q. Now, moving on to the two kidneys. Is there
22 anything notable about either the degradation,
23 decomposition, or something else in this paragraph?

24 A. No.

25 Q. Okay. Which would be to say that you don't

1 notice any decomposition in the kidneys?

2 A. There's nothing that I note that I consider
3 sufficient to comment on.

4 Q. Okay.

5 A. There's always some change.

6 Q. It hadn't reached to the point where you would
7 have written it down?

8 A. Obviously, yes.

9 Q. Okay. And just to be clear, if you had
10 noticed some of those changes, you would have written it
11 down?

12 A. I expect I would, yes.

13 Q. Okay. And same question with the internal
14 genitalia. Any notation about degradation or
15 decomposition or something similar?

16 A. The -- what I noted here was the degradation
17 of the endometrium.

18 Q. Okay. And can you just -- is that: The
19 endometrium is thin and dark red with a reddish fluid
20 present?

21 A. Yes.

22 Q. Okay. And what does that mean with respect to
23 degradation of the organ?

24 A. This has more to do with it looks like she had
25 recent menstruation.

1 Q. Okay. So to be clear, it has nothing to do
2 with what happened to the body after death?

3 A. Nothing I can relate. The information I'm
4 trying to relate is that it looks like she's recently
5 menstruated.

6 Q. Now, when you're writing up an autopsy report
7 like this, would it be your practice to note anything
8 that you considered significant?

9 A. Yes.

10 Q. Okay. Going to the Report of Toxicological
11 Screens, that's going to be the next page. I'm actually
12 going to mark Exhibit 25.

13 A. So within this exhibit, this will become
14 Exhibit 25?

15 Q. Nope.

16 A. Okay.

17 Q. I'm just going to show you some other related
18 documents.

19 A. Yes, sir.

20 (Exhibit 25 marked for identification.)

21 BY MR. RICKNER:

22 Q. All right. I'd like you to look -- obviously,
23 there's a page in Exhibit 3 that seems to be roughly the
24 same or really just a different copy of the same document
25 as the first page of Exhibit 25. Do you see that?

1 A. Yes.

2 Q. Okay. Let's move to the second page of
3 Exhibit 25. Now, they crossed out the month and changed
4 it from a 4 to a 5, and if you compare, it added a third
5 line that says: Acidic drugs not detected in the
6 blood --

7 A. Correct.

8 Q. -- do you see that?

9 A. Correct.

10 Q. And then at the bottom, it says: 7/13/87, WS?

11 A. Yes.

12 Q. Okay. Would the 7/13/87, WS, would that be
13 Sawyer, Dr. Sawyer's notation?

14 A. I do not know who. It could also be Bill
15 Sullivan.

16 Q. Okay. And that was another doctor that
17 worked --

18 A. No, he was my investigator, or an
19 investigator, but I can't remember if he was in the
20 office at that time or not.

21 Q. Okay. Do you know why this tox screen would
22 have been supplemented a month later, it appears?

23 A. Somebody must have asked a question.

24 Q. Like what?

25 A. That pertained to toxicology and knew this was

1 run.

2 Q. Okay. And just going through the process,
3 somebody asked a question, and as a result, somebody did
4 a test that determined acidic drugs not detected in the
5 system?

6 A. Somebody asked the question, I can't tell you
7 who. I have no memory of this.

8 Q. Okay.

9 A. And then Chip Walls would have arranged to
10 have that tested.

11 Q. Okay. Now, it says: Basic drugs were not
12 detected in the blood, liver, or gastric contents?

13 A. That's correct.

14 Q. What are basic drugs in this context?

15 A. You should ask the toxicologist.

16 Q. Okay. And it says: Gastric ethanol at
17 0.16 grams per deciliter?

18 A. That's correct.

19 Q. Okay. What does that mean?

20 A. That means that alcohol was detected in the
21 gastric contents at that concentration.

22 Q. Okay. And could you say what that
23 concentration would equate to as far as how many drinks
24 somebody had?

25 A. No.

1 Q. Okay. The blood had .03 grams per deciliter
2 of ethanol?

3 A. Yes. Correct.

4 Q. And the vitreous humor had .02 grams per
5 deciliter --

6 A. That's correct.

7 Q. -- of ethanol.

8 Do either of those numbers say anything about
9 how recently it had been since the person had taken a
10 drink or drinks?

11 A. They don't tell you how recently. They tell
12 you that that's as much as you've got. You then look
13 hypothetically, okay, let's say somebody got completely
14 hammered, had a liver that didn't metabolize worth a darn
15 and got to, let's say, a .4, which would kill me, then it
16 would take a long time before you get to a .03.

17 Q. Right. Days even?

18 A. I'd have to -- I'm not good at math in my
19 head. But alternatively, if you've got somebody who has
20 had half a drink and you get this, then it's closer in
21 time.

22 Q. Okay. What about somebody who had two
23 cocktails?

24 A. If we look at two standard servings of
25 alcohol, two glasses of wine versus two glasses of hard

1 liquor -- well, not same size glass -- two shots of hard
2 liquor versus two beers, we consider them approximately
3 equivalent, then it takes -- you will clear those -- the
4 average person is going to clear something on the order
5 of a drink an hour, but it's quite variable depending on
6 your experience with alcohol.

7 Q. Okay. And when you say clear on the order of
8 a drink an hour, does that mean that you would not be
9 able to detect, for example, any ethanol in the blood?

10 A. It would be below reporting limits, at least,
11 for most people. Let's say if you chug a beer right now,
12 an hour from now there's a good chance it's over
13 reporting limits, then you test your blood.

14 Q. But I'm saying, if somebody has the ethanol
15 concentration that you're seeing here in the blood --

16 A. Right.

17 Q. -- how long would it take an average woman to
18 clear, let's call it three standard beers, down to this
19 ethanol level?

20 A. Three drinks. We would generally think of
21 clearing about anywhere from 0.015 to 0.02 for the novice
22 drinker per hour.

23 Q. Which equates to?

24 A. So if you had just three drinks, then you
25 expect that person to get -- and a standard size weight,

1 I can't remember what her weight was -- and it's just
2 drunk down, you're going to expect something on the order
3 of, let's see, .015 times three, so .45, something like
4 that -- .045, something like that, to .6 maybe, 0.06.

5 Q. Okay. And then to go from .45 to -- it's
6 .045 to .06?

7 A. Right.

8 Q. To go down to .03 from that level,
9 approximately how long does it take, one, two hours?

10 A. Yeah, something like that.

11 Q. Okay. So just to be clear, this ethanol
12 concentration means that she had a drink quite recently
13 before she died?

14 A. What supports that more is the vitreous,
15 because you still have the issues of decomposition.

16 Q. But with respect to the vitreous humor, how is
17 that different?

18 A. You don't put alcohol directly in your eye.

19 Q. Good.

20 A. It gets there from the blood. So it's got a
21 lag phase.

22 Q. Okay. And what is that -- so these two
23 numbers, what do they say about how long Ms. Hill had
24 consumed some alcohol before she died?

25 A. It doesn't really tell me, because I can't

1 tell you how high she was before.

2 Q. And if somebody told you that she had three
3 standard drinks before she died, about how long would you
4 expect -- what would these numbers say about her having,
5 let's say, the assumption of three standard drinks
6 before?

7 MR. JULIAN: Object to the form of the
8 question.

9 A. Okay. If she had three standard drinks, had
10 average or anticipated absorption, had average
11 metabolism, as I said, we expect you to metabolize about
12 a drink an hour, and she's got 0.02. She's got two
13 drinks, an indication of a couple drinks here.

14 Q. Okay. But how long before she died, is what
15 I'm trying to figure out?

16 A. I guess I kind of lost track of the question.

17 MR. VENTRONE: Me, too.

18 Q. What I'm saying is: If you assume that she,
19 let's say, sat down at dinner and had an alcoholic
20 beverage, two or three drinks -- or withdrawn. Let's be
21 more specific.

22 Let's assume she sat down in the course of a
23 normal dinner, an hour long, she consumed three standard
24 units of alcohol, how long would you expect it to be
25 after that moment for her to get to the ethanol in the

1 blood and ethanol in the vitreous humor you see here?

2 MR. JULIAN: Object to the form.

3 MR. VENTRONE: Object to the form.

4 A. An hour or two, something like that.

5 Q. Okay. Moving to the next page of Exhibit 25,
6 please.

7 A. Okay.

8 Q. It says here: One vial of an amber liquid.
9 Do you see that? That's items for exam.

10 A. The next page is this.

11 Q. Oh. Continue going to the page after that,
12 then.

13 A. Okay.

14 Q. It's labeled 11094 on the bottom right.

15 A. Okay.

16 Q. And it says Laboratory Report, Syracuse Police
17 Department.

18 A. Right.

19 Q. And halfway down, Items for Exam: One vial of
20 an amber liquid. Do you see that?

21 A. Yes.

22 Q. What does that say -- what does that mean?

23 A. It's an amber liquid.

24 Q. Do you know which amber liquid it is?

25 A. No.

1 Q. Okay. And please, leaf through the rest of
2 the exhibit and tell me if you see any indication as to
3 what that amber liquid might have been?

4 A. It says amber liquid, and I do not see
5 anything that tells me what it was sampled from or
6 where -- and I don't see a chain of custody for transfer
7 to the lab, so I don't know where it came from.

8 Q. Go back to the Exhibit 3, which is your
9 autopsy and the other related -- nope -- yep, and back to
10 the Gross Description of Brain After Fixation.

11 A. Yes, sir.

12 Q. I'd like -- the process of this analysis, do
13 you take the brain out of the formalin and then dissect
14 it?

15 A. Yes.

16 Q. Okay. And that was, at least from our
17 records, done by George Collins?

18 A. He was -- he would be directing it. I cannot
19 tell you that he didn't have somebody else with him. I'm
20 sure he had residents he'd train and they would come,
21 too.

22 Q. The person we know who did this is George
23 Collins, right?

24 A. The person who created the report is George
25 Collins.

1 Q. And based on that, the information we have
2 suggests that he is the one who actually did the
3 examination?

4 A. He's the primary observer and it is his
5 responsibility, yes.

6 Q. Okay. As you said, the absence of information
7 is not proof of something, so it doesn't say anything
8 about who else might have been there, right?

9 A. Right. Correct.

10 Q. Okay. Now, does this note any decomposition
11 on the outside of the brain?

12 A. He did not make any specific note of it.

13 Q. Okay. He does note decomposition in the
14 cavities in the deeper areas of the brain; is that right?

15 A. That's correct.

16 Q. Okay. So just to be clear, that means if you
17 slice the brain up and you look inside of it rather on
18 the surface, you'd see the decomposition?

19 A. You see the bubbles, yes.

20 Q. Okay. What are those bubbles?

21 A. They're gas.

22 Q. Okay. So is this similar to the pancreas,
23 meaning that some sort of microorganism starts digesting
24 parts of the brain or something else?

25 A. The pancreas is not from typically

1 microorganisms. It's from autolytic --

2 Q. I used a bad example. Why don't I just ask
3 this the right way.

4 What causes those cavities in the brain during
5 decomposition?

6 A. Release of gas by microorganisms.

7 Q. Okay. I was pretty close, then.

8 And how long does that typically take to
9 develop?

10 A. I never timed it, never been able to do an
11 experimental series where we kill people and then look at
12 their brains to study that process.

13 Q. Okay. Is it fair to say that there just isn't
14 any way to determine how long it takes for those cavities
15 to develop due to decomposition?

16 A. That is correct. We know that we see them
17 more commonly in bodies that are further along from the
18 time of death, but we don't have any specific way we can
19 see them early on. There's a high degree of variability.

20 Q. What does further on mean in that sentence?

21 A. In other words, that has been dead longer. So
22 if I have a body that is three, four, five days dead and
23 then take the brain out, I have a higher chance of seeing
24 something like this than a brain that comes out of
25 somebody who has just died.

1 Q. Okay. Is it inconsistent with somebody who
2 has been dead for, let's say, a day and a half?

3 A. No.

4 Q. Okay. Is there any way to determine, to your
5 knowledge, between a day and a half and three or four
6 days?

7 A. From the gas bubbles, no.

8 Q. And from the decomposition that you see noted
9 here?

10 A. I cannot make a decision there, no.

11 Q. Okay. I'd like you to go to the next page.
12 This is a summary that's by Mr. M. Birchmeyer. It says
13 father and brother, found dead, in the top left?

14 A. Yes. Hold on. Is this the one we're looking
15 at?

16 Q. No. This one.

17 A. Okay. Let me see if I can find it.

18 Q. Bingo.

19 A. Okay.

20 Q. The -- have you reviewed this document before?

21 A. I've seen it.

22 Q. Okay. Would you have reviewed it around the
23 time that you did the autopsy?

24 A. It would be generated after that.

25 Q. Okay. Would it have been something that you

1 would have reviewed before testimony or do you think you
2 just reviewed it recently?

3 A. I know I reviewed it recently. I anticipate,
4 but I do not have a specific memory, so I cannot answer
5 the question.

6 Q. Understood. Prior to your arrival at the
7 scene, do you know how long investigators had been at the
8 apartment where Valerie Hill died?

9 A. That may be in records that I reviewed, but I
10 did not record that. I have no memory of it.

11 Q. Okay. About how many people were on the
12 scene, do you think?

13 A. I have no memory of it.

14 Q. Would you agree with me that if people had
15 been coming and going outside of the house, that could
16 have decreased the temperature inside the apartment?

17 A. I don't know enough about the environment
18 during the time they were there, the opening and closing
19 of doors, typically they wouldn't leave things open, but
20 I don't know.

21 Q. If multiple investigators had been coming in
22 and out and they left the door open, could that have
23 dropped the temperature in the apartment?

24 A. I don't know what the relative temperature is
25 outside. I can't answer that question.

1 Q. Well, just as a general matter, if the
2 temperature outside was cooler than the temperature in
3 the apartment, would keeping the door open drop the
4 temperature in the apartment?

5 A. If you give the hypothetical that there's
6 lower temperature outdoors, then opening would obviously
7 introduce cooler air.

8 Q. Okay. When making determinations about the
9 temperature in the apartment while Valerie Hill's body
10 was there, did you take into account the fact that the
11 apartment could have dropped in temperature?

12 A. All I noted was the temperature that was
13 there, and I believe it was the basement that we looked
14 at for temperature.

15 Q. Okay. And did you actually have a thermometer
16 with you?

17 A. If I remember correctly, somewhere there's a
18 note of 62 degrees.

19 Q. It's in your testimony. Do you -- would you
20 have noted it anywhere else?

21 A. I would presume that it's noted somewhere,
22 because I would -- but I do not have an independent
23 memory of that.

24 Q. Okay. Is it possible when you said 62 degrees
25 when you were testifying it was an estimate?

1 A. No.

2 Q. Is it possible that you testified based on
3 some notes rather than the autopsy report and what we
4 have in Exhibit 3?

5 A. It's possible that it came from observations
6 made at the scene either by the police department or by
7 us.

8 Q. Okay. Do you remember if the 62 degrees was
9 the room she was in or the basement?

10 A. I think, but I'm not -- but this is partially
11 speculative, because I do not have an independent memory
12 of it, that it was basement.

13 Q. Okay.

14 A. Because we were interested in what the
15 temperature of the floor might be.

16 Q. Okay. And is it possible that the temperature
17 in the apartment was warmer than that?

18 A. Anything is possible.

19 Q. Okay. Did you take any steps to exclude that
20 possibility in your determination or address it?

21 A. After it -- now it comes into presumption,
22 because I do not have an independent memory of how I did
23 that.

24 Q. What is algor mortis, meaning A-L-G-O-R
25 mortis?

1 A. Cooling of the body.

2 Q. Okay. So that's the body temperature
3 calculations we've discussed before?

4 A. Yes.

5 Q. Okay. Now, I'd like you to go to Exhibit 2,
6 and I'd like you to go to Page 122 as noted by the top
7 right. Obviously, this exhibit is not a hundred and
8 twenty-two pages.

9 MR. JULIAN: Can you just identify what
10 the exhibit is, please?

11 MR. RICKNER: Exhibit 2 is his grand jury
12 testimony.

13 MR. JULIAN: Thank you.

14 BY MR. RICKNER:

15 Q. Now, we're actually -- I'm just going to read
16 the question and answer to you, starting on Line 25 of
17 122. Question: Now, talking about the fecal staining
18 that you saw on her body which is shown in Exhibits 5 and
19 6, did you find any evidence that she had been violated
20 in her anus to cause these smears?

21 Answer: I'm just going to refer to my notes.
22 Unfortunately, I didn't have a chance to review them
23 before I got here today. Let me just check. I found no
24 bruise.

25 Do you see that?

1 A. Yes.

2 Q. What are the notes that you're referring to
3 here?

4 A. Probably the protocol and then my file.

5 Q. Okay. What's the protocol?

6 A. The autopsy report.

7 Q. Okay. And you say your file, what would be
8 your file in this context?

9 A. Whatever we had collected, the information
10 that had been collected, and whatever had been created at
11 the medical examiner's office.

12 Q. Okay. Would that include, for example, any
13 handwritten notes that you may have on type -- or on
14 lined paper, rather?

15 A. I don't remember that I used lined paper
16 there, but I should include whatever -- the file is
17 supposed to include every note made at the office.

18 Q. Okay. But as you sit here today, when you
19 said I'm going to refer to my notes, you don't know what
20 that meant?

21 A. I'm presuming it's the autopsy report.

22 Q. Okay.

23 A. But that is a presumption.

24 Q. Who is Jack Klugman?

25 A. He was an actor on television who portrayed

1 rather inaccurately forensic medicine.

2 Q. Okay. Can you move to Page 126? And
3 Mr. Fitzpatrick says: Let me clear up one thing. In
4 terms of time of death, can you as medical examiner
5 accurately pinpoint the time of death of a deceased
6 person?

7 No. Only Jack Klugman can do that?

8 A. Yes.

9 Q. Okay. What TV show was that?

10 A. Excuse me?

11 Q. What was the TV show he was on?

12 A. I don't actually know.

13 MR. JULIAN: Can I volunteer? Quincy.

14 MR. RICKNER: Okay. Thank you.

15 MR. VENTRONE: That's right.

16 MR. RICKNER: I'm old enough, but I'm
17 not -- I don't remember this one.

18 A. I can't remember.

19 Q. The purpose of this comment is to say
20 essentially that a medical examiner can't really pinpoint
21 the time of death?

22 A. That's correct.

23 Q. Okay. And then afterwards, you testified that
24 there are guidelines and parameters?

25 A. He -- well, yes. Okay.

1 Q. And just to say, just to be clear, your
2 testimony in the grand jury with respect to whether or
3 not she had died on the 27th, you said it's on the
4 outside edge of that possibility but it's possible?

5 A. Right.

6 Q. Okay. So when you're talking about
7 likelihoods, you were putting the 27th on a lesser
8 likelihood than the other days --

9 A. Correct.

10 Q. -- before she was discovered?

11 A. Correct.

12 MR. JULIAN: Object to the form.

13 MR. VENTRONE: Object to the form.

14 Q. Was the heat on in her apartment when you --

15 A. I do not know, only that it was cool when I
16 was there.

17 Q. Okay. Now, we're going to mark this as
18 Exhibit 26, and this is your trial testimony from -- it's
19 Pages 865 of the transcript through Page 919, bearing
20 Bates stamp P01536 to P01590.

21 (Exhibit 26 marked for identification.)

22 BY MR. RICKNER:

23 Q. Okay. Could you do me a favor and go to
24 Page 915?

25 A. By the top right?

1 Q. That's correct. And it says here, just
2 starting at Line 9:

3 Question: Have you also testified in front of
4 the grand jury, Doctor, that prior to that particular
5 testimony, you had not reviewed some of your notes and
6 slides in connection with this case?

7 Answer: That's correct.

8 Question: And naturally, when you prepared
9 for trial, you did review your slides and notes; is that
10 true?

11 That is correct.

12 And did you see some, as I think you indicated
13 on cross-examination, some decomposition to the brain as
14 you reviewed your slides in preparation for this trial
15 testimony?

16 Yes, sir.

17 I read that correctly?

18 A. Yes.

19 Q. Okay. Now, with respect to -- I'm just going
20 to mark this as Exhibit 27.

21 (Exhibit 27 marked for identification.)

22 BY MR. RICKNER:

23 Q. Now, on Exhibit 27, I'd just like you to look
24 at pages four and five, which are the blowups in
25 color --

1 A. Yes, sir.

2 Q. -- two photos, perhaps, of the brain.

3 Now, when you used the phrase "slides" in your
4 testimony, were you referring to the slides where a piece
5 of cardboard or plastic is placed around 35-millimeter
6 films, it's sort of two-inch-by-two-inch square that you
7 can then put into a projector?

8 A. I -- that would be included. I make no
9 specific denotation here which ones were involved. And I
10 looked at tissue slides.

11 Q. Okay.

12 A. And Kodachrome slides.

13 Q. Well, the tissue slides --

14 A. The tissue slides were not brain.

15 Q. Okay. Can you move to page three of that
16 exhibit?

17 A. Page three of which exhibit?

18 Q. Oh. Page three of Exhibit 27, the photographs
19 and et cetera.

20 A. Okay.

21 Q. When you say tissue slides, we have here,
22 according to the records, gland, lung, uterus, and liver.
23 Do you see that?

24 A. Okay.

25 Q. Are these the type of tissue slides you're

1 talking about?

2 A. Yeah.

3 Q. Now, with respect to the decomposition you
4 were talking about, were you looking at slides like this,
5 meaning placed on glass for use with a microscope?

6 A. I would look at both of them.

7 Q. Were the brain slides the ones that you're
8 talking about with respect to decomposition of the brain?

9 A. I did not look at tissue slides of the brain.
10 They didn't exist.

11 Q. Okay. My next question is: Are pages four
12 and five the slides that you did look at?

13 A. They're the Kodachrome slides, yes.

14 Q. Okay. So just to be clear --

15 A. But the question that I was asked was a
16 compounded question.

17 Q. Okay.

18 A. So I'm looking at the aggregate of the -- the
19 import I get from that question is did I look at the
20 aggregate of what I had available to me. Yes.

21 Q. Well, let's be very clear here. If we go back
22 to 915, it says, question: Did you see some, as I think
23 you indicated on cross-examination, some decomposition to
24 the brain as you reviewed your slides in preparation for
25 this trial testimony?

1 A. Yes.

2 Q. Okay. Did you understand that question
3 meaning slides of the brain?

4 A. No, the only slides we have, the Kodachrome
5 slides.

6 Q. Okay. And were the slides of the brain you
7 were talking about pages four and five of Exhibit 27?

8 A. That would be the only ones that I would have,
9 yes.

10 Q. Okay. And what did you see in -- and please,
11 look at them now. What did you see in those slides that
12 indicated decomposition?

13 A. That is consistent with it. I mean, those
14 slides are not in themselves the definition of
15 decomposition. But I described in my autopsy report
16 softening and autolytic change on gross exam, and what
17 you've got here is a brain that is slumping slightly down
18 in the brain cage and has slight flattening of the gyral
19 definition. But handed this independently with no
20 history, you're not going to derive -- it goes along with
21 what I observed but it's not pathognomonic of it.

22 Q. Okay. Now, did reviewing those slides in
23 preparation for trial change your opinion with regard to
24 the likelihood of the date of death or the range of the
25 date of death?

1 A. No.

2 Q. So just to be clear, when you reviewed those
3 slides, it did nothing to change your opinion that you
4 originally gave in the grand jury that the 27th was on
5 the outside edge of that possibility?

6 MR. VENTRONE: Object to the form.

7 A. Correct.

8 Q. So just to be clear, examining the slides in
9 preparation for trial didn't really do anything with
10 respect to the time of death testimony?

11 MR. JULIAN: Object to the form.

12 Q. Is that correct?

13 A. It did not change my opinion that it could be
14 two to three days.

15 Q. Okay. Did anything that you reviewed prior to
16 trial testimony as distinguished from prior to your grand
17 jury testimony do anything to change your opinion with
18 respect to the range of the date of death and the
19 likelihood of each date in that range?

20 A. The aggregate of information with the
21 decompositional changes that are there slants it towards
22 the longer period, longer than the earlier period, but it
23 does not -- and I think I make it very clear in my
24 testimony, it does not define the time of death.

25 Q. Okay. But what I'm asking is: When you say

1 slants, you used outside possibility in grand jury.

2 A. Mm-hmm.

3 Q. Was your opinion at trial any different from
4 that?

5 A. No.

6 Q. All right.

7 MR. RICKNER: It is noon-thirty. That's
8 not a real word. But we're kind of at a sort
9 of good break point if people wanted to take
10 five or ten.

11 MR. JULIAN: Okay.

12 (Off record: 12:28 p.m. to 12:43 p.m.)

13 MR. RICKNER: This is 28.

14 (Exhibit 28 marked for identification.)

15 BY MR. RICKNER:

16 Q. So have you ever seen Exhibit 28?

17 A. Excuse me? Have I seen this one?

18 Q. Yeah.

19 A. I can't remember.

20 Q. Do you remember in the year 2000 anybody ever
21 calling you and asking you any of the questions posed one
22 through seven in Exhibit 28?

23 A. I do not remember.

24 MR. RICKNER: Let's go to Exhibit 29.

25 (Exhibit 29 marked for identification.)

1 BY MR. RICKNER:

2 Q. I'm actually most interested in page three.

3 Now, do you recognize the name Timothy Phinney?

4 A. Yes.

5 Q. Who is Timothy Phinney?

6 A. He was a Syracuse Police Officer who ran a
7 fish store.

8 Q. Who what?

9 A. Ran a fish store, believe it or not.

10 Q. At the same time as being a police officer,
11 he --

12 A. Yes.

13 Q. -- just ran a fish store?

14 And when you say a fish store, do you mean
15 selling fish or selling ways --

16 A. Selling fish.

17 Q. -- to catch fish?

18 A. Pet fish. Pet fish.

19 Q. Pet fish?

20 A. Yeah.

21 Q. Okay. Do you remember talking to Officer
22 Phinney with respect to the Valerie Hill murder?

23 A. Nope.

24 Q. That's all for Exhibit 29.

25 Now, did you ever speak to the police about

1 your estimation with respect to the time of death for
2 Valerie Hill?

3 A. I'm sure there was discussion, but I have no
4 independent recollection of discussing time of death with
5 anybody. I don't do that. I don't establish times of
6 death. I can't.

7 Q. Do you have any reason to believe that you
8 would have given them an estimate or a range as to when
9 you believe she had died?

10 A. I do not have any recollection of doing such.

11 Q. Would it have been your practice to do so if
12 they had asked?

13 A. I would discuss with them the parameters of
14 what was there, but I would not come down and say -- and
15 sometimes get misunderstood when you discuss things. I
16 don't give a time of death. I just -- it's -- I've never
17 done that.

18 Q. Would you give a preliminary estimate of the
19 time of death?

20 A. I might tell somebody when I would start my
21 investigation and work away from.

22 Q. Okay. You mean so when you're talking about
23 likelihood, sort of where you put the center of the bell
24 curve as a likely time of death and then moving further
25 out, either before or after that point as being less

1 likely?

2 MR. JULIAN: Object to the form of the
3 question. You may answer.

4 A. I would -- since I don't have a memory of
5 doing it in this case, what I would do is discuss what
6 the possibilities are as far as effects on the case. It
7 would always be wide open.

8 Q. It would always be wide open, but if asked,
9 you would say which days you thought were more likely or
10 less likely?

11 A. Or where I would start. And this is the
12 problem that I've got, is that people misinterpret what
13 you're trying -- somebody would say, you said such and
14 such time of death, or something, if you give -- it's
15 like saying maybe to a child. They take it as a yes. So
16 I do not give -- I say, okay, start here and then work
17 from there.

18 Q. Okay.

19 MR. RICKNER: Exhibit 30.

20 (Exhibit 30 marked for identification.)

21 BY MR. RICKNER:

22 Q. It bears at the bottom left the Bates number
23 010309 to 010310.

24 A. Right.

25 Q. Application for Search Warrant. Going to

1 page two, it's partially redacted in the version I have,
2 but it says in the third to bottom paragraph on page two,
3 Voluntary Affidavit, above the swearing portion of it:
4 That the Onondaga County Medical Examiner's Office,
5 redacted, preliminary estimate on the time of death of
6 the victim, redacted, was sometime Saturday, the 28th of
7 March afternoon and Sunday morning the 29th of March,
8 1987.

9 A. Okay.

10 Q. Do you see that?

11 A. Yeah.

12 Q. Now, with respect to the more likely or less
13 likely that you just determined, would this have been the
14 period of time where you would have told them to start in
15 the way that you had described in the prior question?

16 MR. JULIAN: Object to the form of the
17 question.

18 A. As I said, I don't have an independent memory
19 of it, so I can't speak to it directly, but that would be
20 a reasonable thing to do.

21 Q. Would that be consistent with all of the
22 records that you've reviewed in preparing for this
23 deposition?

24 A. Yes.

25 Q. All right. Now, who is William Sullivan?

1 A. He was my chief investigator for several
2 years.

3 Q. And as chief investigator, did he have any
4 medical training or was he just, like, a retired police
5 officer or somebody else?

6 A. He was a funeral director who had been coroner
7 and death investigator in Illinois, I think DeKalb
8 County, Illinois, if I remember correctly.

9 Q. Was he a doctor?

10 A. No.

11 Q. Did he have a degree in some sort of
12 coroner-related specialty, whatever that might be?

13 A. I think funeral directing degree.

14 Q. Was he there when Valerie Hill's body was
15 first examined?

16 A. I can't remember. If there's documentation
17 that he was there, then he would have been there.

18 Q. Were there any instances where Mr. Sullivan
19 would ask you to take the temperature of the body?

20 A. I don't remember any.

21 Q. Do you have any reason to believe he wouldn't
22 have asked that about Valerie Hill?

23 A. We did not do it, so I would not expect him
24 to.

25 MR. JULIAN: Object to the form.

1 Q. Would -- did he ever, to your memory, object,
2 saying I think you should do this?

3 A. I don't remember any such event.

4 Q. Okay. Do you remember discussing the time of
5 death of Valerie Hill or the date of death with
6 Mr. Sullivan?

7 A. No.

8 Q. If he said that you had told him that you
9 believe the date of death was the 28th or the 29th, would
10 you have any reason to believe that you had never said
11 that?

12 MR. JULIAN: Object to the form of the
13 question.

14 MR. VENTRONE: Object to the form.

15 A. He has -- he's entitled to say whatever he
16 believes. I don't quite know how to answer that one.

17 Q. Okay. Now, obviously Valerie Hill died in
18 1987, and the grand jury was in 1992; is that right?

19 A. That's my -- yes.

20 Q. Okay. So there's a fairly significant period
21 of time between the two events; is that right?

22 A. That's correct.

23 Q. And prior to your grand jury testimony in
24 1992, did you ever have any discussions with anybody from
25 the DA's Office about your findings and opinions with

1 respect to Valerie Hill?

2 A. I have no recollection. It's such a passage
3 of time. We often discussed, so I don't -- but I can't
4 tell you what we did or did not do.

5 Q. Okay. Would it be correct to say that you had
6 worked with District Attorney Fitzpatrick earlier in the
7 '80s, before he was elected?

8 A. While he was assistant, yes.

9 Q. Right, when he was an assistant district
10 attorney?

11 A. Yes.

12 Q. Okay. And he was a homicide prosecutor,
13 right?

14 A. Well, he was a prosecutor. I don't know how
15 they designate him.

16 Q. Okay. Did you testify in homicide cases when
17 he was an assistant district attorney acting as lead
18 counsel?

19 A. I presume so, yes.

20 Q. Okay. And then he got elected as district
21 attorney in late 1991. Does that sound right?

22 A. I'll take your word for it.

23 Q. Okay. There came a time when he started
24 opening cold cases, do you remember that?

25 A. I don't remember that specifically, no.

1 Q. Okay. Do you remember somebody named Peter
2 Tynan?

3 A. Peter Tynan was, I believe, Fitzpatrick's
4 chief in-house investigator.

5 Q. Okay. Would you discuss your findings with
6 Peter Tynan?

7 MR. JULIAN: Object to the form of the
8 question.

9 A. If he came over and asked questions, I'm sure
10 I would.

11 Q. Okay. Just in general, do you remember in
12 1992 having conversations with Peter Tynan regarding the
13 findings in autopsies, in any autopsy?

14 A. No.

15 Q. Okay. Do you have any recollection of talking
16 to him in respect to this case?

17 A. No.

18 Q. Okay. In the '90s, could you explain the sort
19 of process by which you would find out that you had to
20 testify to grand jury or that a case was being reopened?

21 A. Somebody would let me know. I don't know how.

22 Q. Okay. Would you get a phone call, a memo,
23 something else?

24 A. I do not know. I can't tell you that.

25 Q. Would there be times when a case was being

1 — investigated when somebody from the district attorney's
2 office, whoever that might be, would call you up and ask
3 you to discuss the findings of the case?

4 A. Yes.

5 Q. Okay.

6 A. I'm sure there were. I can't remember any
7 specific ones, but we were open. All you had to do was
8 call.

9 Q. And did you sometimes have those discussions
10 with District Attorney Fitzpatrick?

11 A. I would be open -- he prepared, so in general
12 with cases going to court, I would expect I would have
13 some discussion with him.

14 Q. Okay. Would it be your practice to, you know,
15 for example, prepare your testimony in the '90s with
16 District Attorney Fitzpatrick prior to testifying?

17 A. He wouldn't so much prepare your testimony.
18 He would want to know what I could say and couldn't say.

19 Q. Okay. And so prior to whenever you would have
20 testified, you would have had a discussion about what you
21 could or couldn't say based on your findings?

22 A. Yes, very frequently.

23 Q. And would this happen sort of well advance of
24 your grand jury or trial testimony?

25 A. I can't remember timing.

1 Q. Okay.

2 A. I would expect it to be before, not after.

3 Q. That would make sense. Was it typically, for
4 example, a period of time before so you could review your
5 notes and get acquainted with the file?

6 A. I cannot remember specifically timing
7 sequences.

8 Q. With respect to a case like this that's five
9 years old, so perhaps it's not as fresh in your mind,
10 would you have gotten some sort of advanced warning so
11 you could pull out the file, review it, and sort of
12 prepare your opinions for testimony?

13 MR. JULIAN: Object to the form.

14 A. I can't answer that. I do not know what
15 scheduling went on, whether it was just come on over or
16 can I come over or discuss on the phone. I can't tell
17 you.

18 Q. Okay. Now, would it be correct to say that at
19 some point you were investigated by the county attorney?

20 A. That's my understanding from reviewing the
21 folder.

22 Q. Well, do you remember that investigation?

23 A. I don't remember them. I remember the
24 New York State Health Department.

25 Q. Okay. That's separate. But let's start with

1 the State Health Department since you seem to remember
2 that. Do you remember when you started being
3 investigated by the State Health Department?

4 A. There were multiple investigations over the
5 years.

6 Q. Okay. Which ones do you remember as you sit
7 here today?

8 A. I don't have much specific memory of any of
9 them. One was a woman complaining about a death being
10 called a suicide, I know that. And then eventually, they
11 had placed one of their investigators in my office and he
12 was given free run of everything.

13 Q. Okay. Would that have been in 1992?

14 A. I cannot remember the date.

15 Q. Okay. When did you become the medical
16 examiner for Onondaga County?

17 A. That would be '83.

18 Q. Okay. And you held that position until '93?

19 A. Yes.

20 Q. All right. When the investigator from the
21 Department of Health was placed, I guess, stationed in
22 your office, do you know why they were stationed in your
23 office?

24 A. I think because they were investigating me.

25 Q. Into what?

1 A. That's up to them. I'm not -- I have no
2 influence of the investigation. It's completely their
3 choice.

4 Q. Do you have any memory of what they were
5 investigating?

6 A. They were investigating me and my practices.

7 Q. What parts of you and your practices?

8 A. Everything, as far as I'm concerned.

9 Q. Give me some examples.

10 A. They were doing the investigation. You're
11 going to have to ask them.

12 Q. Were they investigating you with respect to
13 improperly disposing of human remains?

14 A. That was one of the issues. I can't remember
15 if they were primarily involved with that or it was -- I
16 think the environmental -- I think
17 Environmental -- there's a department that's got to do
18 with environmental something or other, I think they were
19 involved at one point. I can't remember.

20 Q. Was the investigation with respect to improper
21 disposal or storage of certain toxic chemicals?

22 A. Yes.

23 Q. Was part of their investigation involving
24 providing human remains for scientific inquiry to
25 Bristol, I believe is the company?

1 A. Yes.

2 Q. Okay.

3 A. Bristol-Myers Squibb, I believe is the full
4 name of the company.

5 Q. Was part of the investigation having to do
6 with running a skeletal remains clinic at your farm?

7 A. Yes.

8 Q. With respect to the areas of investigation
9 that we just spoke about, did you ever talk to William
10 Fitzpatrick about them?

11 A. Yes. He ran the skeletal investigation.

12 Q. That would have been in July of 1993?

13 A. He did it two years.

14 Q. He investigated you for two years?

15 A. I don't -- I said -- well, you're talking
16 about investigation. You're talking about -- first, you
17 mentioned Fitzpatrick. I presume you're talking about
18 the skeletal investigation. We had a skeletal course,
19 and Bill Fitzpatrick, we ran that course two years.

20 Q. Okay. To be clear, you and
21 William Fitzpatrick ran the skeletal investigation?

22 A. Well, he ran the course. I was highly
23 supportive of it. He brought a range for speakers to
24 come in.

25 Q. Was this while he was the district attorney or

1 while he was in private practice?

2 A. Wait a minute. I thought you were talking
3 about William Rodriguez. That's the guy running the
4 course.

5 Q. I was talking about Fitzpatrick.

6 A. Oh, sorry. Fitzpatrick had absolutely nothing
7 to do with this.

8 Q. Okay. Who was running the course with you?

9 A. William Rodriguez.

10 Q. Okay. Who is William Rodriguez?

11 A. He's a forensic anthropologist.

12 Q. And where was he employed in the '80s and
13 '90s?

14 A. He was employed in my office as a forensic
15 anthropologist and as a -- eventually became the chief
16 investigator.

17 Q. I was talking about with respect to William
18 Fitzpatrick.

19 A. Sorry. Because you were talking
20 anthropology and I just --

21 Q. I'm not trying to confuse you.

22 A. I just met Rodriguez again at the May meeting,
23 so I --

24 Q. You just ran into him again recently?

25 A. Right. Right.

1 Q. Okay. Gotcha. With respect to the
2 investigations into the improper disposal of chemicals,
3 human remains, donating body parts --

4 A. Right.

5 Q. -- did you ever discuss that with William
6 Fitzpatrick prior to when he started his investigation?

7 MR. JULIAN: Object to the form.

8 MR. VENTRONE: Object to the form.

9 A. No. I have no memory of that. I didn't -- in
10 fact, I was not, that I know of, aware of any
11 investigation by him until late, when there was a report
12 that he's been investigating me. I was aware of the
13 New York State.

14 Q. Right. No, I'm talking about the
15 investigation by, let's say, the County of Onondaga --

16 A. Okay.

17 Q. -- the County Attorney's Office, did you ever
18 discuss that with Mr. Fitzpatrick.

19 A. No.

20 Q. Did you ever make him aware of the fact that
21 you were being investigated by the county?

22 A. It was so public, I don't think it was
23 necessary for me to get ahold of him.

24 Q. What about the investigation by the Department
25 of Health, did you ever make Mr. Fitzpatrick aware of

1 that?

2 A. That's what I'm saying, it's so public that I
3 never had anything -- I didn't feel I had the need to
4 note that. I'm pretty sure I would have probably let the
5 Health Department know. They were my bosses. I mean, my
6 boss was Jim Miller, the health commissioner, my direct
7 boss, and then after that it would be the County
8 Attorney's Office and the County Executive. Now, what
9 conversations I had there, I can't remember.

10 Q. I'd like you to pull out the stack of
11 previously marked exhibits, Exhibit 9.

12 A. Exhibit 9, got it.

13 Q. Now, did you author Exhibit 9?

14 A. It certainly looks like my type of thought
15 processes.

16 Q. Okay.

17 A. And it looks like language that I would write.

18 Q. So just to be clear, you recognize your own
19 writing in Exhibit 9?

20 A. I believe. It may have -- I do not know who
21 else might have been involved, but it looks I would have
22 to be at least the major contributor.

23 Q. Okay. Do you remember writing this on or
24 about March 5th, 1993?

25 A. No.

1 Q. Okay. And please, go through it. Do you
2 remember the various accusations against you in March of
3 1993?

4 A. There were all kinds of accusations, so yes.

5 Q. Does this appear to be a complete
6 documentation of your response to those various
7 accusations?

8 A. It looks like a response to a variety of
9 accusations, and that got apparently sent to the Post
10 Standard. I don't remember it.

11 Q. Did you send it anywhere else?

12 A. I have no knowledge if I did or not.

13 Q. Following the accusations printed in the Post
14 Standard, did you hold a press conference?

15 A. I believe there was at least one.

16 Q. Was that called by you or somebody else?

17 A. I do not know.

18 Q. I'd like you to pull out Exhibit 8, please.

19 A. Sure. Here we go.

20 Q. Do you recognize this article in Exhibit 8?

21 A. I have seen it. Yes.

22 Q. Is that a photograph of you being on the right
23 of the rectangle?

24 A. Yes.

25 Q. And on the left is a photograph of William

1 Fitzpatrick?

2 A. That's correct.

3 Q. And was this photograph taken at a press
4 conference where you responded to your critics?

5 A. That's what it -- yes.

6 Q. At the time did you believe that William
7 Fitzpatrick was trying to protect you from this
8 criticism?

9 MR. JULIAN: Objection to form.

10 MR. VENTRONE: Object to the form.

11 Q. You can answer.

12 A. He was willing to step forward and give his
13 impression, which surprised me, because it left him open
14 to insult from the paper.

15 Q. Okay. And to be clear, his impression was at
16 the time favorable?

17 MR. JULIAN: Object to the form.

18 MR. VENTRONE: Object.

19 A. I would have to ask him, but he did support
20 me.

21 Q. Okay. And that would be in March of 1993?

22 A. That would be whenever this was. Yeah, March
23 of '93.

24 Q. Do you recognize the name Sidney
25 Cominsky --

1 A. Yes.

2 Q. -- that's spelled with a C-O-M-I-N-S-K-Y?

3 A. Yes.

4 Q. Okay. When did you hire him first?

5 A. I can't remember when I first was involved
6 with him.

7 Q. Do you remember if it was before or after the
8 March press conference in 1993?

9 A. I think it was before.

10 Q. And without going into your conversations with
11 Mr. Cominsky, just in general was he hired by you to help
12 defend against the various allegations that were being
13 made against you?

14 A. He was -- I approached him for advice and
15 countenance, because it was very disturbing to me.

16 Q. I'm sorry. Could you repeat that? I did not
17 here that phrase.

18 A. Okay. I approached him for advice and
19 countenance, because everything was very disturbing to
20 me. It was extremely distressing to be attacked the way
21 I was being attacked.

22 Q. Okay. Now, at the time, did you have any
23 understanding of who was making those attacks?

24 A. Well, I can't remember exactly what -- when it
25 all started and when Cominsky got involved. It's all

1 been lost in --

2 Q. I mean, who was attacking you besides the
3 press?

4 A. Well, the press was the major attacker. Then
5 eventually people inside the office were identified.

6 Q. Okay. How many people were inside the medical
7 examiner's office in 1992?

8 A. I don't have an exact number. I'm guessing
9 that there were about fifteen, and the public health lab
10 separate.

11 Q. What do you mean by the public health lab
12 being separate?

13 A. I wore two hats. I was the medical examiner
14 and I was the public laboratory director.

15 Q. Gotcha. Now, with respect to the public
16 health, how many employees did you have in that section
17 for your other half?

18 A. That varied.

19 Q. Roughly?

20 A. Well, that varied over a period of time. I
21 can't tell you exactly when it switched, because I
22 haven't kept track of that. When I got there, we had
23 something like seventy positions, not all of them filled,
24 at the public health laboratory, and I believe -- let's
25 see. At the medical examiner's office when I got there,

1 a supervisor, two for each shift, that's six, eight -- it
2 might have been ten or twelve, I think. I don't remember
3 exactly the number.

4 Q. Okay. So just to be clear,
5 approximately -- in 1992, 1993, approximately thirty
6 people worked for you?

7 A. That was '83.

8 Q. Oh. I'm talking about '92, '93.

9 A. '92, '93, there had been changes. The County
10 had cut back on the lab. In fact, there was one day
11 where a huge number of people had to be dismissed just
12 because the County cut the positions. So by that time, I
13 think it was something on the -- it's an estimate.
14 Probably around thirty employees in the lab is my guess,
15 and maybe fifteen at the medical examiner's office,
16 something like that.

17 Q. And how many of those people do you believe
18 were providing critical statements about you in 1992,
19 1993?

20 A. I don't know.

21 Q. I'd like you to pull out Exhibit 13.

22 A. Okay.

23 Q. Now, just go through and tell me, have you
24 ever seen this before?

25 A. Yes. I saw it yesterday.

1 Q. And would you have been provided a copy of
2 that around the time that it came out?

3 A. I do not know.

4 Q. Did you provide any sort of official response
5 to it?

6 A. I also do not know that answer.

7 Q. Following the release of this report, did you
8 hold a press conference, for example, to respond to it?

9 A. That, I don't remember.

10 Q. Do you believe that this report made you doing
11 your job more difficult?

12 MR. JULIAN: Form.

13 A. I mean, it was a difficult job. I
14 don't -- and with controversy, you've always
15 got difficulty, so it was part and parcel of everything
16 going on.

17 Q. Were you worried that because of the newspaper
18 articles about you, that jurors might be less likely to
19 accept your opinion?

20 MR. JULIAN: Form.

21 MR. VENTRONE: Object to the form.

22 Q. In 1992, 1993?

23 A. That actually was not on my radar.

24 Q. Meaning you didn't consider it?

25 A. That, I can't tell you, because I can't

1 remember what I thought or did. But the concern for me
2 was the function of the medical examiner's office and the
3 function of the public health lab.

4 Q. What do you mean by function?

5 A. That they could do their work and produce
6 quality work.

7 Q. And you were worried that the investigation
8 impinged on that?

9 A. Well, it's difficult to hire people when
10 you're under controversy.

11 Q. Were there any other issues that the
12 investigation controversy created in your office?

13 A. It's never -- it always takes time, and it
14 places requirements on you when there are active
15 investigations going on and active questions being asked.

16 Q. Now, at some point did you learn that you were
17 being investigated by William Fitzpatrick's office?

18 A. Well, I know it now. Back then, I didn't
19 think of him so much as investigating my office.

20 Q. When did you -- when do you believe you first
21 would have learned about his investigation?

22 A. I know that he gave a news conference, and I
23 don't remember any formal approaching of anything you're
24 being investigated.

25 Q. Do you mean that you would have learned about

1 his investigation closer to when it was completed?

2 A. Yeah.

3 Q. Okay. Did he ever interview you as part of
4 his investigation?

5 A. I don't remember any, but he may have, because
6 I didn't understand, I had no understanding that he was
7 actively investigating me.

8 Q. Okay. Did you ever have an interview with a
9 Peter Tynan?

10 A. I talked to Tynan many times, so I don't know
11 what I discussed. I do not have a memory of that.

12 Q. Okay. Let's be more specific. Can you pull
13 out Exhibit 7?

14 A. Okay.

15 MR. RICKNER: Can we actually take five?
16 I've got something I want to make sure that my
17 associate didn't just miss something. I think
18 that's what just happened.

19 MR. JULIAN: No problem.

20 MR. RICKNER: Thank you.

21 (Off record: 1:16 p.m. to 1:25 p.m.)

22 BY MR. RICKNER:

23 Q. Okay. Moving on to Exhibit 7. Were you
24 surprised to find out that William Fitzpatrick was
25 investigating you?

1 MR. JULIAN: Object to the form.

2 A. I don't remember any specific response. I was
3 being investigated. So what's another investigation.

4 Q. Did you have any reaction to William
5 Fitzpatrick's investigation when you learned about it?

6 A. Not that I know of, that I remember, anyway.
7 Just okay, it's out there, it's -- there's this, and
8 okay.

9 Q. Following William Fitzpatrick's investigation,
10 did anybody ask you to resign as medical examiner?

11 A. Well, I was asked to resign by Nick Pirro at a
12 meeting, I can't remember the exact date, but I believe
13 it predeceased this Exhibit 7 --

14 Q. So you believe that you were asked --

15 A. Precede. Sorry.

16 Q. I get you. Just for clarity, prior to the
17 date of Exhibit 7, you were asked to resign --

18 A. Yes.

19 Q. -- by County Attorney Nicholas Pirro?

20 MR. VENTRONE: Object to the form. It's
21 county ex.

22 MR. RICKNER: Okay. Excuse me. County
23 Executive Nicholas Pirro.

24 MR. JULIAN: And I further object,
25 because we have the date, which is

1 November 19th, 1993.

2 THE WITNESS: That's when this was
3 released.

4 MR. RICKNER: Right.

5 BY MR. RICKNER:

6 Q. And it happened beforehand, right?

7 A. I believe so, yeah.

8 Q. Okay. And what was your understanding of why
9 you were being asked to resign?

10 A. That I was too much trouble to keep around.

11 Q. Okay. In the sense that you had been
12 investigated too much?

13 A. Well, there was constant news noise, which is
14 negative. It doesn't help anybody. It's disruptive, and
15 so it was time for me to move on.

16 Q. Okay. Was it your understanding that if you
17 resigned, that the criminal investigation against you
18 would end?

19 MR. VENTRONE: Object to the form.

20 A. That was something that came up afterwards. I
21 was asked to resign -- there was a meeting, I remember
22 that meeting that they want and Pirro was there,
23 and -- Pirro is my assigning -- is the person who assigns
24 whether I'm employed or not, so do you want me to resign?
25 Yes. Okay. Then I resigned.

1 Q. And as a result of your resignation, it's your
2 understanding that the criminal investigation stopped?

3 A. That's what it says.

4 Q. Okay. Was that your understanding at the time
5 when you resigned?

6 MR. JULIAN: When you say it says, I
7 don't mean to interrupt.

8 MR. RICKNER: He can answer how he wants.

9 A. It says here, if I remember correctly --

10 Q. It's on page three at the bottom.

11 A. If said resignation is forthcoming, I have
12 informed Dr. Mitchell's attorney that in the interests of
13 justice, my Office's probe is at an end. That was not a
14 condition of my resignation.

15 Q. At least as far as you know?

16 A. Yeah.

17 MR. VENTRONE: He can only testify as to
18 what he knows.

19 MR. RICKNER: Shut up. We don't do that
20 here. No speaking objections.

21 Q. Now, following your resignation, did you
22 continue on at the medical examiner's office in any
23 capacity?

24 A. I was used as a forensic pathologist for a
25 little over two months, I believe. I can't remember

1 exactly what date.

2 Q. If I told you it was roughly January that you
3 actually fully left the office, would that sound right to
4 you?

5 A. Yes.

6 Q. Okay. Now, in the time between let's say July
7 of 1993 and January of 1994, did you continue testifying
8 in criminal cases?

9 A. Yes.

10 Q. Okay. Were you ever cross-examined about the
11 investigations in criminal cases?

12 A. I can't remember what the cross-examinations
13 were. I've been cross-examined so many times.

14 Q. Okay. Were you ever told by William
15 Fitzpatrick or anybody else at the DA's office that they
16 couldn't use you as a witness because of the ongoing
17 investigations?

18 A. Since they used me, I had a feeling that
19 didn't happen.

20 Q. Well, I'm wondering if you -- if there came a
21 time when they said, no, they weren't going to use you
22 anymore?

23 A. They never told me that directly.

24 Q. Okay. Now, where did you go after
25 Onondaga -- your employment at Onondaga County?

1 A. Skaneateles, where my wife lived, and I was
2 unemployed for two or three months.

3 Q. Okay. And I'm not going to pronounce that
4 correctly, but you just mean you went to live in the
5 place where your wife was from for two or three months?

6 A. Well, that's where our house was. That's
7 where I lived.

8 Q. Okay. When I say where did you go next, I
9 mean as far as employment?

10 A. Employment, I ended up in Topeka, Kansas.

11 Q. Okay. Now, how long were you in Topeka,
12 Kansas?

13 A. I lived in Topeka for, let's see, a little
14 over ten years.

15 Q. Now, when you first moved to Topeka, Kansas,
16 were you employed as a medical examiner or some similar
17 title?

18 A. My first employment was with George and
19 Jill -- George Thomas and Jill at that time I think her
20 last name was Gould, who were and still are a husband and
21 wife forensic team, and then he had me appointed as a
22 deputy coroner after -- I can't remember exactly when
23 that happened, if that happened immediately when I
24 started working with him or if it had a little bit of
25 delay.

1 Q. So a little explanation, when you say husband
2 and wife forensic team, did they have their own office,
3 did they work for the state, something else?

4 A. Well, they are a husband and wife who both are
5 board certified forensic pathologists. They moved to
6 Topeka. He was appointed Shawnee County District
7 Coroner. I presume that she had a deputy coronership
8 with him. I don't know if when they moved there they
9 were -- how immediate appointments were or not. She
10 was -- became district coroner for Douglas County, I
11 know, and maybe some other counties. I can't remember.

12 Q. I guess I'm trying to understand the structure
13 here. The husband and wife, did they have, for example,
14 their own company and then they were employed by the
15 state or did they just happen to be a husband and wife
16 who were both forensic investigators and they had
17 different positions in Kansas?

18 A. They're not forensic investigators. They're
19 forensic pathologists.

20 Q. Okay.

21 A. They were forensic pathologists who moved to
22 Kansas. They were husband and wife before they moved to
23 Kansas. And he took on the position of Shawnee County
24 District Coroner. She and he worked together. She
25 handled primarily the cases that came from outside the

1 county, which meant usually traveling out to typically a
2 funeral home to do autopsies, and then of course testify
3 if that was required. And he did primarily the cases
4 that were in Shawnee County or came to Shawnee County.

5 Q. Got it. And so with respect to working in
6 Kansas, did you have to get licensed as a medical doctor
7 to work as a, I think you said, forensic pathologist?

8 A. Yes.

9 Q. Did you get licensed in Kansas?

10 A. Yes.

11 Q. Was that before or after you left New York?

12 A. Well, I applied for the license, and when I
13 got down there, I can't remember if it had come in yet or
14 it came in after that, shortly after I got there.

15 Q. Did you apply for the license before you had
16 put in your resignation or afterwards?

17 A. After.

18 Q. Okay. And this may have already been covered,
19 but you were also licensed in Florida for a time; is that
20 correct?

21 A. Yes.

22 Q. And that's as a medical doctor in Florida?

23 A. That's correct.

24 Q. Okay. And I know that there's been some
25 states after Kansas, but just up and to the point where

1 we are in the conversation, it was Florida, New York, and
2 Kansas?

3 A. Also North Carolina.

4 Q. You worked in North Carolina prior --

5 A. I was in training in North Carolina and had to
6 be licensed there.

7 Q. Okay. Now, in order to be a forensic
8 pathologist in New York, besides being a medical doctor,
9 did you need any additional licensure with the state?

10 A. No.

11 Q. Okay. And what about Florida, North Carolina,
12 and Kansas, was the medical doctor license enough or was
13 there additional?

14 A. Forensic pathologist is not a license. It's
15 training.

16 Q. Right. In order to work as a forensic
17 pathologist in New York, did you need a specific license
18 with the state?

19 A. If you want to call yourself a board certified
20 forensic pathologist, you have to have the forensic
21 boards.

22 Q. But also --

23 A. There are people who call themselves and don't
24 have them.

25 Q. Okay. But do you also have to be licensed

1 with the state as a medical doctor?

2 A. You have to be licensed as an MD, yeah, or a
3 DO.

4 Q. Okay. And that's true in New York, Florida,
5 North Carolina, and Kansas?

6 A. Yes.

7 Q. And what I'm saying is besides that license,
8 were there any others in those states that you were
9 required?

10 A. No.

11 Q. Okay. Going back for a second with respect to
12 the medical examiner, you were the county medical
13 examiner, meaning you were essentially -- for the medical
14 examiner's office, you were at the top of the food chain?

15 A. Yes.

16 Q. Okay. With respect to performing autopsies
17 while you had that title, were you the final decision
18 maker?

19 A. Well, once other pathologists came in, no.

20 Q. What does that mean?

21 A. Well, when another forensic pathologist does a
22 case, they make the decisions on their case. I may or
23 may not agree with them. I might advise them if I think
24 what they are doing is incorrect, but their decision is
25 their decision.

1 Q. Right. What I'm saying is when you make a
2 decision with respect to an autopsy, is that the decision
3 of the medical examiner's office?

4 A. If it's my case, yes.

5 Q. Okay. And so in 1987 or 1993, if you were
6 making a decision with respect to an autopsy and the
7 findings, that was the decision of the medical examiner's
8 office?

9 A. That's correct.

10 Q. Okay. And there were other people who had
11 authority over you with respect to employment, like
12 Nicholas Pirro; is that right?

13 A. Well, at that time, it was Mulroy.

14 Q. Later on Nicholas Pirro?

15 A. Later on Nicholas Pirro.

16 Q. But would it be correct to say that when it
17 comes to the autopsy and the opinions therein, they don't
18 have any authority over that, only your overall
19 employment?

20 A. That's correct.

21 Q. Okay. The buck stops with you?

22 A. Yes.

23 Q. Okay.

24 MR. RICKNER: I think
25 actually -- everybody has problems. Is this a

1 good time for lunch? I'm sort of moving on to
2 a new section.

3 MR. JULIAN: Okay.

4 (Off record: 1:37 p.m. to 2:16 p.m.)

5 BY MR. RICKNER:

6 Q. Can we go back to Exhibit 26? I want you to
7 go to Page 890.

8 A. 26.

9 Q. It's the big thick one.

10 A. 820, you said?

11 Q. 90.

12 A. 890.

13 Q. Actually, you know what? I'm going
14 to -- let's go to 891.

15 A. Okay.

16 Q. It's only going to be one extra page, so it
17 should be all right.

18 A. 891. Here we are.

19 Q. It says, starting at Line 2:

20 Question: Do you have an opinion,
21 Dr. Mitchell, within a reasonable degree of medical
22 certainty as to the cause of death of Valerie Hill?

23 A. Yes.

24 Q. I do, right?

25 A. Correct.

1 Q. Okay. Now, let me go back to the prior page.
2 And actually, you know what, there's a big long
3 objection, and you have to go back to start -- I'm not
4 going to read it all into the record. Read 889 all the
5 way through to where you start answering on Line 21, just
6 to refresh your recollection.

7 A. So you want me to read 889, 890, and 891, is
8 that it?

9 Q. No. You can stop at the bottom of 890.
10 You'll see. That's where your answer goes.

11 A. So the bottom of 890. Okay.

12 Q. That is, in fact, just one question and one
13 answer, it just -- with a colloquy in the beginning -- in
14 the middle, rather.

15 MR. JULIAN: I'm not looking to -- do you
16 get what he's asking you?

17 THE WITNESS: Yeah.

18 MR. JULIAN: Okay.

19 Q. I'm just avoiding reading the whole thing into
20 the record, so if you want to read it yourself, 889, the
21 question, onto 890.

22 A. I'm at, I think, Line 21 on 890 is what you
23 want me to look at?

24 Q. No. No. That's where I want you to stop.
25 The question before it, unfortunately, stretches quite a

1 long time --

2 A. Okay.

3 Q. -- from Line 4 on 889 really to Line 6 on 890.

4 A. Okay.

5 Q. Just review that quickly, if you don't mind.

6 A. Okay.

7 Q. So your answer to that long question that I
8 just had you review is:

9 Answer: I would consider that it's more
10 likely that she died Friday night to possibly very early
11 Saturday morning would be the possibility that's given
12 there -- I don't know when your overlaps are with the
13 phone calls -- than to have been killed the following
14 day.

15 A. Right.

16 Q. That's your answer, right?

17 A. Right.

18 Q. Did you provide that testimony within a
19 reasonable degree of medical certainty, that specific
20 opinion?

21 MR. JULIAN: Object to the form.

22 A. I don't -- non-medical, so I don't know how
23 you put a medical certainty into it.

24 Q. Okay. So just for clarity, that answer was
25 not made within a reasonable degree of medical certainty?

1 MR. JULIAN: Object to the form.

2 MR. VENTRONE: Same objection.

3 Q. Was that a correct statement that I provided?

4 A. I'm trying to figure out how this applies
5 here. I'm not trying to be cute. I'm just trying to
6 understand it. With that hypothetical and my background
7 information, accepting the hypothetical is accurate,
8 which I don't know if it is, then it would be a
9 reasonable degree of medical certainty.

10 Q. Okay. Is there a reason that you didn't
11 testify to that specifically?

12 A. What do you mean?

13 Q. To say that it's within a reasonable degree of
14 medical certainty?

15 A. Nobody asked the question that way.

16 Q. Now, you discussed earlier slides with respect
17 to Kodachrome?

18 A. Right.

19 Q. Was it your general practice to refer to
20 Kodachrome slides as just slides or was it your practice
21 to differentiate them specifically from medical slides
22 like the ones in the prior exhibit?

23 A. It would depend --

24 MR. JULIAN: Form.

25 THE WITNESS: I'm sorry.

1 MR. JULIAN: Go ahead.

2 A. It would depend upon the context of the
3 conversation.

4 Q. Okay. What depends?

5 A. Well, if I realize that it could be confusion
6 and that it was important, then I would expect to
7 differentiate. If it did not appear to me an area of
8 confusion even though it may have been, I would not.

9 Q. Okay. It would be fair to say that sometimes
10 you would testify and make clear that you made Kodachrome
11 slides versus microscopic slides and sometimes you
12 wouldn't?

13 A. Well, I don't ever remember having run into
14 that, but that's what I would expect. I have no memory
15 of ever having had to make that distinction in that way.

16 Q. Was re-reviewing Kodachrome slides something
17 that you did typically in, let's say, 1992, 1993 when
18 preparing for testimony?

19 A. If I'm reviewing my case and I have
20 photographs and histology, that would be reviewed.

21 Q. Okay. But I meant slides specifically,
22 Kodachrome slides?

23 A. That's part of it. We took Kodachrome slides
24 as our photo media, so I would review photographs, and
25 the photographs that I took were the Kodachrome slides,

1 so I would review those.

2 Q. Okay. When was the last time you spoke to
3 William Fitzpatrick?

4 A. The last time I can remember, I was back in
5 town for some other reason with my wife, and we went to
6 lunch with Carol Williams and I think maybe one of the
7 other ex-employees or current employees, I don't know, of
8 the medical examiner's office when I was there as medical
9 examiner, to a restaurant, I think it was East Genesee
10 Street or out in Dewitt area, I can't remember, and
11 during lunch, he happened to walk by and said hello.

12 Q. Okay. What year was this?

13 A. I don't know.

14 Q. Was it more than a decade ago?

15 A. Yes.

16 Q. Okay. Were you ever contacted either by
17 Mr. Fitzpatrick or somebody at his office during the time
18 that the Hector Rivas' habeas petition was pending in the
19 district court?

20 A. I don't know.

21 Q. What about when it was pending on appeal?

22 A. Don't know. I was never called to come and do
23 anything. I don't know if there was ever any contact.

24 Q. Do you recall if anybody ever called you about
25 the Valerie Hill case, anyone for any reason following

1 the conviction?

2 A. There was a TV station that called me when I
3 was in Topeka as district coroner and wanted to discuss
4 the case without any opportunity to see anything or
5 review anything, so I didn't.

6 Q. And when was that?

7 A. While I was district coroner in Topeka. I
8 cannot tell you the date.

9 Q. Somewhere in the '93 to 2003 range?

10 A. Yes.

11 Q. Okay. Or '94 to 2004?

12 A. Well, 2010, rather.

13 Q. Okay. Now, you were the Topeka, Kansas
14 coroner, you said, in --

15 A. Shawnee County Coroner.

16 Q. Shawnee?

17 A. Shawnee County Coroner.

18 Q. Okay. What years was that?

19 A. Let's see. George left in '97, I believe, so
20 I think it was '97, and then I resigned it in 20 -- I
21 think 2010 or 2011, when I moved the practice to Kansas
22 City.

23 Q. Okay. And you said you moved your practice to
24 Kansas City. Is that a -- withdrawn.

25 When you say -- so you resigned as the Shawnee

1 County Coroner?

2 A. Yes.

3 Q. Okay. Why did you resign?

4 A. Shawnee County was making unreasonable
5 demands. We had a private practice that provided service
6 and they were producing unreasonable demands, and the
7 practice was not going to be able to operate properly.

8 Q. When you say --

9 A. Among other things with having to provide more
10 financial support to the county. Because we already paid
11 their staff at overtime rates for using them if they were
12 working beyond time -- beyond their county time. We had
13 a contract to use them more and to use the staff that
14 were there, plus with the staff we added to it. Because
15 both our private office and the county office were in the
16 same facility, but we provided private staff and also
17 supplemented the full-time staff at the coroner, the
18 county coroner's office, so it was a conjoined event.

19 With what they wanted to do, this was not
20 going to work out. It was going to be too expensive, and
21 it was not going to work out. So I resigned the position
22 right there at the county exec -- well, it was the county
23 manager. I can't remember. It's a
24 three-person-controlling board from the county, and -- or
25 gave notice. I gave them three months to find somebody.

1 And then I moved the practice to a morgue that was being
2 built in Kansas City.

3 Q. Okay. And when you say unreasonable demands,
4 do you mean just the sheer number of, for example,
5 autopsies that you were being asked to perform?

6 A. No. In fact, it was going to reduce the
7 number that we could perform which would not provide the
8 income that was necessary to pay the staff.

9 Q. Oh, I see.

10 A. And it was going to -- we were not going to be
11 able to provide services to some of the other counties,
12 plus it was going to cost us more to do it, so we -- so I
13 moved us to Kansas City.

14 Q. So for that coroner's office, how was it
15 funded?

16 A. Well, Shawnee County?

17 Q. Mm-hmm.

18 A. That's through the taxpayers' dollars.

19 Q. So what's the relationship with the private, I
20 guess, practice that you had just described?

21 A. Okay. They couldn't find anybody, so they had
22 to hire people who were in private practice, and that's
23 what they did with George, whom I succeeded, came in and
24 they had to pay him, I can't remember exactly what it
25 was, but it was a lot more than they paid me in effect.

1 Then I supplemented my income by doing cases to other
2 counties and that also allowed me to hire staff and to
3 get equipment and things of the sort.

4 Q. But in some manner or fashion, were you being
5 paid by the autopsy?

6 A. We were piecework, if you will, for the
7 autopsy performance, yes.

8 Q. And that was even though you were the county
9 coroner rather than in private practice?

10 A. Right. Well, there was a base salary that
11 they paid only to the district coroner, not to any other
12 pathologist that was there, until I got another
13 pathologist, which I did very shortly after he left, and
14 we split that base salary, so we each had a lower base
15 salary. That got us county health benefits, which were
16 important. Then we -- our primary income was what we
17 brought in from other counties and then also the
18 piecework part for that county. I can't remember the
19 exact financial details of all this.

20 Q. But the upshot was that if you didn't have
21 enough time to do these autopsies from other counties
22 where you were being paid directly, you simply couldn't
23 afford to keep the operation running?

24 A. It wasn't a matter of time. It was a matter
25 of whether you could bring them in or not.

1 Q. Okay. So they told you you weren't allowed to
2 do that anymore?

3 A. They were going to change -- I can't remember
4 all the details of this, but it ended up economically, as
5 far as I saw, was not viable and they were not interested
6 in doing what I was interested in doing, which was being
7 a regional service. Because we've provided service to
8 counties throughout Kansas, not every county in Kansas,
9 but we provided to a large number of counties in Kansas,
10 and this was going to be impractical.

11 There were disadvantages in moving to Kansas
12 City, because the travel distance is so -- there's some
13 counties that only one of them could use us. But the
14 advantage is to be able to be a regional service and try
15 to bring forensic quality up, which was always the idea
16 with the service, was more easily accomplished by going
17 to Kansas City.

18 Q. Okay. So backing up to when you were in
19 New York.

20 A. Yes.

21 Q. Now, as medical examiner, you were being paid
22 by the County; is that fair to say?

23 A. That's correct.

24 Q. Did you also have any type of private practice
25 while you were in New York?

1 A. No.

2 Q. Now, at some point you were providing
3 specimens from corpses to Bristol for scientific
4 examination?

5 A. That's correct.

6 Q. And about what years was that?

7 A. I can't remember.

8 Q. The '80s, basically, the '90s?

9 A. Yeah, until they told me I couldn't.

10 Q. Okay. That would have been maybe in the late
11 '80s?

12 A. I cannot remember.

13 Q. Okay. Besides Bristol, were specimens being
14 provided anywhere else?

15 A. The Environmental Protection Agency wanted
16 adipose tissue samples to look for pesticide residues and
17 we would provide some samples that they then would test.

18 Q. What about Langone, do you provide any samples
19 to them?

20 A. Who is Langone?

21 Q. I don't know. I just came up with the name.

22 A. I have no idea who you're talking about.

23 Q. Fair enough. So the materials that were being
24 provided to Bristol, were they paying for them?

25 A. No.

1 Q. Okay. Was there any instance where you were
2 providing specimens to anyone in exchange for money?

3 A. Absolutely not. It was to the point,
4 actually, when the Environmental Protection Agency sent
5 us a hack, I had Tom Jensen Burrough (ph).

6 Q. Why?

7 A. Because that was an emolument. I accepted
8 absolutely no money. That was a -- that's a problem in
9 lots of places.

10 Q. And by emolument, you mean payment for
11 services, right, that you weren't necessarily expecting?

12 A. Any gain, any financial or material gain, it
13 should be done purely altruistically.

14 Q. Okay. Now, you had a farm in Onondaga County?

15 A. Yeah. My wife and I bought a farm. Yes.

16 Q. Okay. And about how big was that?

17 A. Fifty-five acres.

18 Q. And this is where you ran the skeletal remains
19 clinic --

20 A. Yes.

21 Q. -- in part?

22 A. Yes.

23 Q. Okay. And did that involve burying bodies?

24 A. On that farm, we buried sheep and I think some
25 calves. I think we may have put some skeletal -- I can't

1 remember if we used skeletal there or that was later.

2 There was one year we used the farm, and one year we used

3 a place, I can't remember exactly where it was,

4 Dr. Rodriguez found it through one of our employees.

5 Q. And in either of these locations, did you ever

6 use human remains?

7 A. Yes.

8 Q. Okay.

9 A. Not a complete body, but bones.

10 Q. Okay. So you would effectively bury bones for

11 a period of time, then people could dig them up and learn

12 something about how long they've been there?

13 A. For not very long. Learning how to excavate.

14 What we were trying to do is teach them the mechanisms of

15 how to retrieve material, and then with the animal

16 materials to learn something about the entomology of

17 this.

18 Q. Okay. And for the human remains, did you

19 obtain permissions from families before using them?

20 A. No.

21 Q. What years was this?

22 A. It was in the '80s. I can't remember exactly

23 when.

24 Q. Did it continue into the '90s?

25 A. I believe it's the '80s. I don't remember

1 the -- there were two years, two consecutive years, and I
2 can't tell you the years.

3 Q. And did people pay to take this class?

4 A. Didn't pay me. I don't know -- we offered it
5 two years. I'm presuming there was some sort of tuition
6 because of the cost of running it. I don't know what it
7 was, and I did not handle the money myself.

8 Q. Okay. Did you have a program where you were
9 donating material to the Red Cross Donor Program?

10 A. That was with -- the Red Cross had a donor
11 program, and we worked with them if they had -- one of
12 our cases was a donor, we cooperated with them.

13 Q. Understood. At some point during your
14 practice as medical examiner at Onondaga County, were you
15 taking body parts and providing them to local
16 laboratories for research purposes besides Bristol that
17 we discussed earlier?

18 A. I remember Bristol, and then the Upstate
19 Medical Center was doing a study on bladders and
20 prostates and needed the -- also a sample of
21 endocrine-producing tissue which would be tested over it.

22 Q. And for these donations, did you have
23 permission of the families?

24 A. No.

25 Q. At any point prior to leaving Onondaga County,

1 did anybody tell you that that could be a crime?

2 A. Later, when they were chastising me, yes.

3 Q. Okay. Now, you started, I believe, your
4 practice in North Carolina?

5 A. I was in forensic training.

6 Q. Okay. That's --

7 A. Completed my forensic training in North
8 Carolina, and then after I graduated that program, went
9 to Dade County.

10 Q. Okay. When you were at North Carolina, were
11 you subject to any investigation by any state agency?

12 A. Not that I'm aware of. I mean, there's the
13 standard supplying of information in order to get a
14 license, but nothing nonstandard.

15 Q. Okay. And were you disciplined by any state
16 regulatory agency?

17 A. No.

18 Q. In North Carolina, that is?

19 A. No.

20 Q. Moving on to Florida, were you ever
21 investigated by any state agency in Florida?

22 A. Not of which I'm aware.

23 Q. Okay. Were you ever disciplined by any agency
24 in Florida?

25 A. No.

1 Q. I think we've covered New York.

2 In Kansas, when you were in Kansas, were you
3 ever investigated by any state agency?

4 A. Not that I'm aware of.

5 Q. Okay. Were you ever disciplined?

6 A. No.

7 Q. And that, again, being Kansas.

8 So you got to -- you moved to Kansas City?

9 A. Yes.

10 Q. What did you do in Kansas City, did you have a
11 specific role, something else?

12 A. I did forensic pathology.

13 Q. Okay. With who, yourself, somebody else?

14 A. There were other pathologists that also worked
15 there. I started out with Dr. -- I'm blocking on his
16 name. I'm having a Rick Perry moment. A Bangladeshi
17 pathologist that we hired into the practice, and I moved
18 to Kansas City where Dr. Glenn stayed behind in Shawnee
19 County.

20 Q. Were you in private practice in Kansas City or
21 did you eventually get hired by the state as sort of the
22 state coroner or something like that?

23 A. There is no state coroner. That's always a
24 county-based.

25 Q. Okay.

1 A. I was a deputy coroner for Wyandotte County.
2 I got health insurance that way.

3 Q. Is Kansas City in that county or a different
4 one?

5 A. That's Kansas City, Kansas.

6 Q. Okay. Forgive me. I know very little about
7 Kansas.

8 After that position, did you get another
9 position with the state or something else -- or with the
10 county?

11 A. I had no state positions at all.

12 Q. Okay.

13 A. Other than boards. There were some boards I
14 was on, like the child death review board. It's a pro
15 bono non -- a board that reviews child deaths, and I had
16 that type of interaction with the state, but I was never
17 hired by the state.

18 Q. Okay. Stick to the counties then. Besides
19 the county where Kansas City is located, did you work for
20 any other county following leaving Shawnee?

21 A. I was already coroner for several counties
22 before I left Shawnee County. So I resigned the Shawnee
23 County one. I maintained most if not all of the other
24 coronerships that I had, and in fact, added to them while
25 I was in Kansas City.

1 Q. Okay. And during the time that you were
2 in -- actually, let me be more thorough with the
3 timeline.

4 How long were you in Kansas City for?

5 A. We moved there I think it was 2011, if I
6 remember correctly, and then I left Kansas City in 2018.

7 Q. Now, during that time, you were in Kansas
8 starting from I think it's 1994 going to 2018, did you
9 ever do autopsies from out of state?

10 A. I did some cases where the person had died in
11 Oklahoma. I did cases from Missouri. I believe I may
12 have done a case or two at least from Nebraska, but I'm
13 not -- well, for sure some that died in Nebraska, yes.
14 In fact, we ended up providing all forensic autopsy
15 services for some counties in Missouri, not me
16 specifically but the practice. There may have been some
17 from Nebraska.

18 Q. And after 2018, where did you go?

19 A. I went to Fond du Lac County in Wisconsin.

20 Q. Okay. And why did you leave Kansas City
21 for -- did you say Fronterlock?

22 A. Fond du Loc, F-O-N-D, D-U, L-A-C.

23 Q. Okay. Why did you leave Kansas City for that
24 county in Wisconsin?

25 A. The practice was sold to a group out of

1 Nashville, Tennessee with promises of certain
2 improvements made to the practice, like daily case review
3 and more professional review of cases, which was not
4 happening to my satisfaction, and they promptly did not
5 do anything, and I simply ceased talking to them and
6 started looking for other doctors.

7 Q. Okay. So when you were in Kansas City, did
8 you have a business incorporated that you then worked as
9 a coroner for other things?

10 A. It's a convoluted story. It seems like one
11 business but in fact I think there would be at least
12 three. When I was in Shawnee County, it was Frontier
13 Forensics. Moved it to Kansas City, gave it to Chris
14 Bearing (ph), who was running the morgue, because I'm not
15 the world's best administrator, so I just gave him the
16 business. That I think was Frontier Forensics, LLC, and
17 then it passed on to the people in Nashville. I don't
18 know exactly what they --

19 Q. But there was a legal entity that you had
20 partial ownership that you could sell?

21 A. When I first moved there, it would have been
22 saleable.

23 Q. Okay.

24 A. But I didn't. I gave it away.

25 Q. Okay. So you gave it away to your friend

1 because you didn't want to be the administrator, and that
2 friend then sold it to Nashville?

3 A. Well, he was my -- he became my employer. We
4 were friendly, but it wasn't a matter of just giving it
5 to a friend. He was running it. We seemed to have the
6 same ideals as far as trying to improve quality of
7 service, and so he was good at administration, great
8 investigator, I gave it to him.

9 Q. Okay. So you gave him the legal entity that
10 was doing this work?

11 A. Right. That was around 2013, if I remember
12 correctly.

13 Q. Okay. And then sometime afterwards, he sold
14 to this organization to Nashville?

15 A. Correct.

16 Q. Okay. And following your dissatisfaction with
17 that, you moved to Wisconsin?

18 A. Yes.

19 Q. Okay. And how long were you in Wisconsin?

20 A. About six months.

21 Q. Okay. Why were you only in Wisconsin for six
22 months?

23 A. That was a practice that, again, was supposed
24 to feed itself, if you will, through cases, and one of
25 the coroners there took an extreme dislike to me and

1 informed the county manager or executive, I can't
2 remember exactly what his title is, that he would not
3 submit cases there as long as I was there. So at that
4 point, I said there's no sense in me being here, I
5 resigned.

6 Q. And where did you go afterwards?

7 A. Then I went to Upstate New York to my house in
8 Cato. I worked for a short time for my son who runs a
9 business constructing dairy forms.

10 Q. Okay. Not in a forensic capacity?

11 A. No.

12 Q. Okay. So since you left Wisconsin, have you
13 worked as a forensic pathologist?

14 A. Yes.

15 Q. In what capacity?

16 A. As a forensic pathologist.

17 Q. No. No. Are you working for a county, are
18 you for private hire, something else?

19 A. No. Right now I'm hired as a forensic
20 pathologist doing quality control examinations,
21 basically, in cardiovascular transplant.

22 Q. Where?

23 A. That's in Georgia.

24 Q. Georgia as in the State of Georgia?

25 A. That's correct.

1 Q. Okay. And do you do that work here or are you
2 traveling back and forth to Georgia?

3 A. I don't travel back and forth much unless I
4 have something like this deposition. I live down there.

5 Q. You live in Georgia?

6 A. Yes.

7 Q. Okay. Understood. And how long have you had
8 that job?

9 A. Since April of 1919 -- not 1919. 2019. I'm a
10 century, I'm a vampire.

11 Q. Nobody's accusing you of being a vampire.

12 A. I'm just senile.

13 Q. Neither that. I apologize if I already
14 covered this. While you were in Kansas, were you ever
15 subject to any investigation by any state agency or
16 county agency?

17 A. Not of which I am aware.

18 Q. Okay. And were you ever subject to any
19 discipline?

20 A. No.

21 Q. Okay. And same for Wisconsin, you were only
22 there for six months?

23 A. Correct.

24 Q. Okay. Now, has any court ever found your
25 professional opinion to be unreliable?

1 MR. JULIAN: Form.

2 MR. VENTRONE: Object to the form.

3 Q. You can answer.

4 A. There was a case of a juvenile who hanged
5 himself that -- where the judge said he did not feel that
6 my testimony would be useful for the jury.

7 Q. And what state was that in?

8 A. That was in Kansas.

9 Q. Okay. Do you remember the name of the case?

10 A. No.

11 Q. Besides that one instance, has any court ever
12 found your testimony to be unreliable?

13 A. I don't know if the Daubert -- okay. There's
14 a Daubert hearing in Kansas which said that -- found for
15 the defendants that I -- that my testimony was not
16 scientifically based.

17 Q. Was this in federal court?

18 A. No. That would have been state court.

19 Q. Okay. Do you remember the name of the case?

20 A. No.

21 Q. How many years ago was this?

22 A. That was not -- that would have been about
23 2018, 2019, somewhere in there.

24 Q. Besides the --

25 A. I can't remember whether the first one went to

1 trial.

2 Q. Besides the juvenile case you mentioned and
3 this Daubert case, has there been any other instances
4 where a court has found your testimony unreliable?

5 A. No. I testified against myself.

6 Q. All right. You win. I want to know. How did
7 you testify against yourself, sir?

8 A. Well, it's an Innocent Project case, and when
9 they came to me with the case, we re-examined it, and I
10 said it was wrong, and I testified on behalf of the
11 person who had been convicted.

12 Q. Okay. What was the name of that person?

13 A. Coones.

14 Q. How do you spell that?

15 A. C-O-O-N, I believe, E-S.

16 Q. Was that in the south?

17 A. No. That was in Kansas.

18 Q. Okay. There's somebody by -- a wrongful
19 conviction person with a similar name that just got shot
20 by a sheriff in the south, actually.

21 Okay. So this is a case where you had
22 originally testified as part of the criminal case, and
23 then during the reinvestigation you changed your opinion
24 and testified for the defendant?

25 A. Yes.

1 Q. Okay. Has any district attorney ever refused
2 to use you as an expert because they didn't believe they
3 could rely on your opinion?

4 A. When I refused to call a case a homicide in
5 Dodge County, Kansas, that would have been early in my
6 tenure there, the Dodge County DA stopped using our
7 services. I do not know anything else.

8 Q. Okay. In New York, was there ever a time when
9 a district attorney said that they're not going to rely
10 on your opinion and decided to hire somebody else or
11 simply go on without you?

12 A. I'm presuming that's what Fitzpatrick has done
13 by saying that I needed to leave.

14 Q. Okay. But besides that, is there any other
15 instance from beforehand?

16 A. Not that I'm aware of.

17 Q. Okay.

18 MR. RICKNER: Give me one second. I may
19 be wrapping up here. Do you want to take
20 five?

21 MR. JULIAN: Sure.

22 (Off record: 2:51 p.m. to 3:01 p.m.)

23 (Exhibit 31 marked for identification.)

24 BY MR. RICKNER:

25 Q. So just looking at the top of the e-mail

1 chain, it says "cjrieg@douglascountyks.org"?

2 A. Okay.

3 Q. Who is that?

4 A. I don't know.

5 Q. Do you know who knagsted@aol.com is?

6 A. Oh, that's me. That's my e-mail.

7 Q. So do you remember who you -- let's turn to
8 the second page. C.J. Rieg, Senior Assistant District
9 Attorney, Douglas County, Kansas?

10 A. Okay.

11 Q. Do you remember what this e-mail was about?

12 A. No -- well, it sounds like it's about the case
13 that I discussed, is my guess. Let's see. Yeah, that's
14 what it sounds like.

15 Q. Okay. And was this part of the trial
16 preparation?

17 A. I assume that.

18 Q. I'd like you to go to the bottom of the second
19 page. It says the Rivas case. Do you see that?

20 A. Yes.

21 Q. What did you discuss about the Rivas case with
22 this district attorney?

23 A. I don't know if we did even discuss it. I
24 don't remember. It would be something available to him
25 if you're looking for issues that might come up.

1 Q. Did the Rivas case come up as part of the
2 Daubert hearing?

3 A. It might have. I don't know. I wasn't there.

4 Q. Did you testify at the Daubert hearing?

5 A. No.

6 Q. Okay. All right.

7 MR. RICKNER: Then I have no further
8 questions.

9 (Brief discussion off record.)

10 THE REPORTER: Mr. Ventrone, will you
11 need a copy of today's transcript and then
12 last week of Mr. Fitzpatrick's?

13 MR. VENTRONE: Yeah. Thank you.

14 THE REPORTER: Okay.

15 (Proceedings concluded at 3:07 p.m.)
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1 REPORTER'S CERTIFICATE

2

3 I, ELYSE M. ADDABBO, Court Reporter and

4 Notary Public, certify:

5 That the foregoing proceedings were taken before me

6 at the time and place therein set forth, at which time

7 the witness was put under oath by me;

8 That the testimony of the witness and all

9 objections made at the time of the examination were

10 recorded stenographically by me and were thereafter

11 transcribed;

12 That the foregoing is a true and correct transcript

13 of my shorthand notes so taken;

14 I further certify that I am not a relative or

15 employee of any attorney or of any of the parties nor

16 financially interested in the action.

17

18

19 

20

21 ELYSE M. ADDABBO, Court Reporter
22 Notary Public

23

24

25